

Bodies over Borders and Borders over Bodies: The 'Gender Refugee' and the Imagined South Africa

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Declaration

I, B Camminga, hereby declare that the work on which this thesis is based is my original work (except where acknowledgements indicate otherwise) and that neither the whole work nor any part of it has been, is being, or is to be submitted for another degree in this or any other university.

Signature:.....signature removed..... Date: ... 15/.08/2016.....

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Abstract

This thesis tracks the conceptual journeying of the term 'transgender' from the Global North – where it originated – along with the physical embodied journeying of transgender asylum seekers from countries within Africa to South Africa, and considers the interrelationships between the two. With regards to the term 'transgender', it is the contention of this thesis that it transforms as it travels, taking on meaning in relation to bodies, national homes, institutional frameworks and imaginaries. More specifically, that it has materialised in South Africa – first as a discourse and following this as a politics – due to a combination of social, political and cultural conditions peculiar to the country. In direct correlation to this movement, this thesis argues that in recent years South Africa has seen the emergence of what can be usefully termed 'gender refugees' – *people who can make claims to refugee status, fleeing their countries of origin based on the persecution of their gender identity*. This study centers on the experiences and narratives of these gender refugees, gathered through a series of life story interviews, highlighting the ways in which their departures, border crossings, arrivals and perceptions of South Africa have been both enabled and constrained by the contested meanings and politics of this emergence of transgender, particularly in relation to the possibilities of the South African Constitution. Through such narratives, this thesis explores the radical constitutional-legal possibilities for 'transgender' in South Africa, the dissonances between the possibilities of constitutional law – in relation to the distinction made between sex and gender – and the pervasive politics/logic of binary 'sex/gender' within South African society. In doing so, this thesis enriches the emergent field of Transgender Studies, and challenges some of the current dominant theoretical and political perceptions of 'transgender', by offering complex narratives regarding sex, gender, sexuality and notions of home in relation to particular geo-politically situated bodies. This thesis speaks to contemporary international concerns and debates regarding migration and asylum, identity politics, the control of borders, human rights and protections, documentation and the ongoing bureaucratisation of sex/gender.

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Trans -

1. A prefix occurring in loanwords from Latin (*transcend*; *transfix*), on this model, used with the meanings, “across”, “beyond”, “through”, “changing thoroughly”, “*transverse*” in combination with elements of any origin.
2. A prefix meaning “on the other side of”, referring to the misalignment of one’s gender identity with one’s biological sex assigned at birth: *transgender*; *transsexual*.¹

In recent years we have seen a new phenomenon in Africa’s long history of migration: the journeying of people fleeing persecution, violence and discrimination on the grounds of their gender identity/expression. This thesis terms these people ‘gender refugees’ – *people who can make claims to refugee status, fleeing their countries of origin based on the persecution of their gender identity*. ‘Gender refugees’ are different from sexual refugees in that their issues pertain to their gender identity and birth-assigned sex being perceived as incongruent. This incongruence often poses a threat to their lives and may force them to flee. This thesis is interested in how and why ‘gender refugees’ migrate to South Africa from other parts of Africa, how the term ‘transgender’ travels, and in what form it arrives, as compared to the meanings associated with its circulation and contestation in the Global North. It is also interested in how the journeys of gender refugees to South Africa might be constituted and/or constrained by their relationship with the meaning and politics of the category ‘transgender’.

Transgender has become a globally applicable term. Historically emerging in the Global North, it is predicated on movement. As an analytical category it encompasses concepts such as borders, imaginaries, and ‘home/s’. It is at once about an individual’s physical body and the lived experience of the everyday, while also addressing theoretical issues of interpellation and categorisation within the social body. It is, at its heart, presented as infinitely malleable and yet at times, paradoxically, functions as a term that carries a distinctive kind of analytical and ideological fixity. This fixity is often most visible when the category is utilised in relation to mechanisms – such as human rights – whose functions are often predicated on a dubious conceptual stability. As a term, it is also a site of travel, accruing baggage and meaning through its traversing of countries, cultures and varied institutional frameworks. It is made mobile through legislative use, through textual incorporation, through popular culture, through bodies who may feel a kinship to it or a means through which to explain a felt sense of self, and by organisations where it flags a specific political allegiance or alignment while concomitantly providing the groundwork for further access to various kinds of material support.

¹ Trans- (n.d.). Dictionary.reference.com Retrieved May 30, 2015, from <http://dictionary.reference.com/browse/trans->

It is the contention of this thesis that transgender transforms as it travels, taking on meaning in relation to bodies, national homes, institutional frameworks and imaginaries. Yet, there has been little research to date on the journey of the concept – ‘transgender’ – from the Global North, where it originated, to Africa: how and why it travelled, and its impact in a context very different from the one in which it originated. This movement of the category ‘transgender’ is inter-related with the movement of the people who invoke it – albeit in different ways. Though these journeys – those of asylum seekers and those of transgender – may seem distinct, there is a critical relationship at the intersection of transgender and this particular embodied subject as they migrate and move. In recent years, transgender has begun to pick up greater traction across the African continent, in relation to the contentious notion of human rights, and broad-based organisational and political development. It has also emerged as an individual means of ascribing or describing an element of self or identity. Within these developments, a singular country has come to hold significant recognised political possibility – South Africa.

The Constitution of the Republic of South Africa (1996) unequivocally “enshrines the rights of *all people in [the] country* and affirms the democratic values of human dignity, equality and freedom” (emphasis added).² Rights, then, do not belong exclusively to South African citizens, but to those standing within the South African borderline.³ The Bill of Rights (1996) entrenches the right to freedom of movement, dignity, security of person, and the right of everyone *in South Africa* to access housing, health care⁴ and education.⁵ South Africa is the only country on the African continent that not only recognises but also constitutionally protects transgender individuals; these are rights that acknowledge their very existence. South Africa also offers the possibility of asylum on the basis of persecution due to sexual orientation or gender identity, through the South African Refugees Act (1998)

² Chapter Two

of the *Constitution of the Republic of South Africa*, Act no. 108 of 1996 at 7.1

³ “Once it is accepted, as it must be, that persons within our territorial boundaries have the protection of our courts, there is no reason why “everyone” in sections 12(2) and 35(2) should not be given its ordinary meaning. When the Constitution intends to confine rights to citizens it says so”. Source: *Lawyers for Human Rights and Other v Minister of Home Affairs and other* (CCT 18/03) [2004] ZACC 12; 2004 (4) SA 125 (CC); 2004 (7) BCLR 775 (CC) (9 March 2004) Section 27.

⁴ It is far easier to access hormonal care than surgical interventions. Asylum seekers pay a reduced fee at public hospitals to access hormonal care. The access points are limited to a handful of public hospitals across the country. These spaces are often overburdened and struggle to manage demand. Source: Theron, L., van der Merwe, L.A & Mokoena, N. (Eds.). (2014). *Rooted in the Past Reaching for the Future: Report of the 2nd Trans* Health and Research Conference (Report)*. Gender Dynamix (GDX), Transgender and Intersex Africa (TIA), Social, Health And Empowerment Feminist Collective Of Transgender And Intersex Women Of Africa (SHE

⁵ The Bill of Rights of the Constitution of the Republic of South African. (1996). *Government Gazette*. (No. 17678)

implemented by the Department of Home Affairs (DHA)⁶. The Act is underpinned by two Conventions: the *1951 United Nations (UN) Convention on the Status of Refugees*⁷ and its *accompanying Protocol*⁸, and the *1969 Organisation of African Unity (OAU) Convention governing the Specific Aspects of Refugee Problems in Southern Africa*⁹. These define 'refugee' as per the Refugee Act (1998), read in conjunction with a Constitution¹⁰ that prohibits discrimination on the basis of sex, gender¹¹ and sexual orientation.¹² This, along with the fact that South Africa does not practise a system of encampment, has created a distinctive asylum regime.

The knowledge of this somewhat controversial document called the Constitution is certainly widespread. It has, over time, in relation to the notion of human rights, functioned as a key influence in wider regional reactionary stances most frequently termed 'anti-homosexual', and a major drawcard for those fleeing persecution. Arguably, as gender refugees traverse borders, fleeing persecution in countries of origin and moving towards South Africa, they move not only to claim something, but also to impact and reflect something of the social and national spaces they inhabit. They also reflect something of the spaces they come to, or hope to, inhabit.

Primary Arguments

This thesis has three primary arguments: the first relates to the term 'transgender', the second to the constitutional-legal make up of South Africa and the last to the experiences of gender refugees themselves.

⁶ South African Refugees Act, no. 130 of 1998

⁷ UN General Assembly, *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, United Nations, Treaty Series, 189 UNTS 137 (entered into force 22 April 1954), available from <http://www.refworld.org/docid/3be01b964.html>

⁸ UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, 606 UNTS 267 available from <http://www.refworld.org/docid/3ae6b3ae4.html>

⁹ Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa* ("OAU Convention"), 10 September 1969, 1001 UNTS 45, available from available at: <http://www.refworld.org/docid/3ae6b36018.html>

¹⁰ Section 9(3) of the Bill of Rights in the South African Constitution, referred to as the "Equality Clause". The clause affirms the rights to non-discrimination and equality on the basis of sexual orientation and gender respectively, amongst other grounds.

¹¹ A 2010 decision in the South African labour court regarding the unfair dismissal of a trans person further suggests a possible reading of gender to include gender identity/expression. Source: *Ehlers v Bohler Uddeholm Africa (Pty) Ltd* 2010 (JS296/09) [2010] ZALC 117; (2010) 31 ILJ 2383 (LC) (13 August 2010)

¹² This has been stated on several occasions in Portfolio Committee meetings, in order to establish how South Africa comes to a definition of 'refugee' and accompanying rights in comparison to other countries. Source: Refugee Amendment Bill: Department of Home Affairs Briefing. (NCOP Social Services) (2008). Cape Town: Parliamentary Monitoring Group.

One of the central themes structuring this thesis is migration – the forced migration of gender refugees and the ongoing movement and migration of transgender. At the intersection of the two lies South Africa, with its distinctive history of Colonial heritage, the role of Apartheid, and the advent of a constitutional democracy relative to the country's position on the African continent. This, in turn, allows for a distinctive set of 'transgender phenomena', peculiar to the country. These phenomena can be broadly defined as instances in which the assumed normative/natural linkages between biological sex, gender expression/identity and sexuality are ruptured, "bringing the unnaturalness of this assemblage into visibility".¹³ Transgender phenomena become visible in moments where there is an attempt to control what is perceived as transgressive behaviour – an attempt to maintain normative boundaries, binary gender and social hierarchy. This thesis reads these transgender phenomena as instances indicative of perceptions regarding gender and its relation to the body in South Africa's history. This thesis argues that the advent and development of these phenomena, visible in South Africa's specific legislative, medical, political and cultural approaches to bodies, has ultimately made possible the journey of transgender as it emerges in South Africa – first as a discourse and, following this, as politics.

The second primary argument sits at the junction between the journeying of the term and the journeying of gender refugees. This thesis argues that the legal-constitutional make up of South Africa, post 1994, is key to framing the possibilities of transgender as it circulates beyond the country's borders. Indeed: that transgender, as it migrates, becomes intimately linked to the perceived rights, freedoms and protections unique to South Africa. This in turn facilitates a particular investment in the imaginary of South Africa for gender refugees. However, the term 'transgender' itself, unlike 'transsexuality' or 'sexual orientation', has no clear stature in South African law, becoming politically salient only in the mid 2000s. This thesis argues that the Constitution of the country in fact provides for radical possibilities – as yet unrecognised – beyond identitarian language, for all manner of human beings to find recognition and protection within the country. This thesis reads the structure and intention of the Constitution as having progressive consequences regarding access to rights and protection for those who might consider themselves transgender (or, crucially, be considered by others as such, even though they may not use the term for themselves), and seek refuge in South Africa.

The third and final major argument is intimately linked to the first and second. Part of understanding the possibilities and materiality of transgender in South Africa requires unpacking, as this thesis does, the variegated role of the State¹⁴ and its representatives,

¹³ Stryker, S. (2011). *Transgender Studies 2.0: New Directions in the Field*. Presented at the University of Copenhagen, Center for Kønsforskning.

¹⁴ It must be noted that I read 'the State' here not as a monolithic singular entity but as comprised of multiple sites and actors. These perform many functions, which are

from Apartheid through to Constitutionalism, as the arbiter of both sex and gender and eventually refugee status, and the logic/politics of this. This thesis argues that the South Africa has, over time, maintained a complex and at times confounding position regarding the relationship between sex, gender, sexuality, and the body. In relation to this, the meaning and intent of the law has often been at odds with the State's systems of governance. The nuance and history of these formulations is important because it is within these formulations that gender refugees come to produce the regulatory anxiety and complexity that systems of organisation and administration in South Africa struggle to categorise and comprehend. The experiences of gender refugees, in relation to the varied means through which they interact with representatives of the state and claim rights, tells us something about gender as a mechanism of classification and what sex/gender based categorisation does in the context of national belonging. A crucial point here is the question of overlap between statehood and gender. Concomitantly it also reveals some of the assumptions and 'common sense' ideas regarding gender as binary, which structure State systems and public life. Lastly, it suggests something about the ability of these systems to maintain and reproduce themselves, regardless of the presence of those which might challenge dominant ontological beliefs. Indeed, what this thesis argues is that the dissonance experienced by gender refugees in South Africa is symptomatic of a greater social dissonance: the dissonance between the possibilities of the constitutional law when it comes to the distinction between sex and gender, which is fairly open according to particular readings of sexual orientation and the pervasive politics/logic of binary 'sex/gender'.¹⁵

The Term: 'Transgender'

Internationally, 'transgender' has no singular or fixed meaning, which makes for different and sometimes conflicting usages, but common to these is the understanding of 'transgender' as an 'umbrella term'. Transgender often incorporates, but is not solely restricted to, practices and identities such as transvestism, transsexuality, drag, cross-dressing and genderqueer. It may also refer to individuals who have undergone hormone treatment or surgery to reconstruct their bodies, or to those who traverse gender in ways that do not require medical assistance, or are less permanent. This conceptualisation, by

suggestive of an underlying logic that reproduces, configures and polices the arrangement between gender and sex in specific ways. See: Currah, P. (2013). Homonationalism, State Rationalities, and Sex Contradictions. *Theory Event*, 16(1) p. 5

¹⁵ This formulation draws from Gayle Rubin who asserts that socio-political relations within a given society contain mechanisms that convert sex to gender. Within these, sex is often understood as natural and immutable. Source: Rubin, G. (1975). The Traffic in Women: Notes on the 'Political Economy' of Sex. In R. R. Reiter, (Ed.), *Toward an Anthropology of Women* (pp. 157-210). New York: Monthly Review Press.

activists, academics and individuals, is understood to be inclusive of some variation or combination of the experiences or identities of gender-variant, gender- or sex-changing, gender-blending and gender-bending people. Susan Stryker, for example, uses 'transgender'

not to refer to one particular identity or way of being embodied but rather as an umbrella term for a wide variety of bodily effects that disrupt or denaturalise heteronormatively constructed linkages between an individual's anatomy at birth, a non-consensually assigned gender category, psychical identifications with sexed body images and/or gendered subject positions, and the performance of specifically gendered social, sexual, or kinship functions.¹⁶

The notion that a number of identities and experiences fall within a singular, overarching, category gives the term a certain mobility, but also imbues it with distinctive, often highly confusing, politics. Within its Western origination, the term 'transgender' is highly contested in both its popular and academic uses. In essence, the term enables two things which are paradoxically linked – it is loose enough for a number of people to identify within it, but in consequence of that very looseness there is contention and struggle over the meaning of the term. Perhaps the only clarity to the term is that it is about gender or at the very least begins with a question of gender identity and/or expression as distinct from or in relation to sex and/or sexuality.

Martin Manalansan questions whether it is truly possible for us to think of gender as separate from sex or sexuality.¹⁷ Gayle Rubin asserts that indeed we can and must, stating, "the cultural fusion of gender with sexuality has given rise to the idea that a theory of sexuality may be derived directly out of a theory of gender".¹⁸ Yet, she stresses, they are not the same thing; they form the basis of two distinct arenas of social practice. For Surya Monro and Lorna Warren, gender maintains a critical dialogue with sex and sexuality, but it demands a separate analytical and conceptual path.¹⁹ A shift in the theorisation of sex and sexuality started in the 1960s, particularly focusing on the notion that "sexual meanings, identities, and categories were intersubjectively negotiated social and historical products ... that sexuality was, in a word, constructed".²⁰ In relation to this, there was a concomitant, though less widely expounded, shift in understandings of gender. Writers such as Harold Garfinkel²¹ and Kessler and McKenna,²² in looking at transsexuality, began to question the

¹⁶ Stryker, Susan. 1998. "The transgender issue: An Introduction." *GLQ: A Journal of Gay and Lesbian Studies* 4(2) p. 149

¹⁷ Manalansan IV M. F. (2006). Queer Intersections: Sexuality and Gender in Migration Studies. *International Migration Review* 40(1) p. 226

¹⁸ Rubin, G. S. (1989). Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality. In C. Vance (Ed.), *Pleasure and Danger: Exploring Female Sexuality*. London: Pandora p. 169

¹⁹ Monro, S. and Warren, L. (2004). Transgendering Citizenship. *Sexualities* 7, 345-362.

²⁰ Epstein, S. (1994). A Queer Encounter: Sociology and the Study of Sexuality. *Sociological Theory* 12(2), p. 188

²¹ Garfinkel, H. (1991). *Studies in Ethnomethodology (Social and Political Theory)*. London: Polity.

nature of gender and its own social construction. This work built on the historical psycho-medical understanding of transsexuality already visible in the work of Havelock Ellis,²³ Harry Benjamin,²⁴ Richard von Krafft-Ebing,²⁵ John Money²⁶ and Magnus Hirschfeld.²⁷ As this thesis will argue, particularly in relation to Havelock Ellis, these were key influences in the emergence of particular understandings of gender in relation to sexuality in South Africa.

Transgender emerged out of, and in some ways as a reaction to, this body of work with theorists such as Sandy Stone,²⁸ Kate Bornstein,²⁹ Jack Halberstam³⁰ and Jason Cromwell³¹ at the forefront, disputing any essential connection between sex and gender.³² Additionally, they have argued that gender is embodied and lived out in far more complex and mutable ways than conventional models, across disciplines, have suggested. Yet, contrasting and often conflicting disciplinary, theoretical and identitarian frameworks have converged over understandings of transgender in the Global North. At the heart of the issue, transgendered

²² Kessler, S. J., & McKenna, W. (1978). *Gender: An Ethnomethodological Approach*. New York: John Wiley & Sons.

²³ Ellis, H. (1940). *Studies in the Psychology of Sex*. London: Random House.

²⁴ Benjamin, H. (1977). *Transsexual Phenomenon*. New York: Julian Press.

²⁵ von Krafft-Ebing, R. (1998). *Psychopathia Sexualis*. New York: Arcade Publishing.

²⁶ Money, J. (1952) *Hermaphroditism: An Inquiry into The Nature of a Human Paradox*. (Unpublished Doctoral Dissertation). Harvard University.

²⁷ Hirschfeld, M. (1991). *Transvestites: The Erotic Drive to Cross Dress (New Concepts in Human Sexuality)*. New York: Prometheus Books.

²⁸ Stone, S. (2006). The "Empire" Strikes Back: A Posttranssexual Manifesto. In S. Stryker & S. Whittle (Eds.), *The Transgender Studies Reader* (pp. 221-235). New York: Routledge.

²⁹ Bornstein, K. (1995). *Gender Outlaw: On Men, Women and the Rest of Us*. New York: Vintage.

³⁰ Halberstam, J. (1998). Butch / FTM Border Wars and the Masculine Continuum. *GLQ: A Journal of Gay and Lesbian Studies* 4(2), 287-310.

³¹ Cromwell, J. (1999). Passing Women and Female Bodied Men: (Re)claiming FTM History. In K. More & S. Whittle (Eds.), *Reclaiming genders: transsexual grammars at the Fin de Siècle* (pp. 34-61). London: Continuum International Publishing Group.

³² Key texts include: Stone, S. (2006). The "Empire" Strikes Back: A Posttranssexual Manifesto. In S. Stryker & S. Whittle (Eds.), *The Transgender Studies Reader* (221-235). New York: Routledge.; Feinberg, L. (1997). *Transgender Warrior: Making History from Joan of Arc to Dennis Rodman*. Boston: Beacon Press.; Wilchins, R. A. (1997). *Read My Lips: Sexual Subversion and the End of Gender*. Ithaca, NY: Firebrand Books.; Halberstam, J. (1998) *Female Masculinity*. Durham: Duke University Press.; Cromwell, J. (1999). *Transmen and FTMS: Identities, Bodies, Genders and Sexualities*. Urbana: University of Illinois Press.; Rubin, H. (2003). *Self-Made Men: Identity and Embodiment among Transsexual Men*. Nashville: Vanderbilt University Press.; and Stryker, S. (2006). My Words to Victor Frankenstein Above the Village of Chamounix. In S. Stryker & S. Whittle (Eds.), *The Transgender Studies Reader* (pp. 244-256). New York: Routledge.

individuals are seemingly either perceived as reinforcing hegemonic gender identities³³ or destabilising identity categories³⁴ altogether.

Arguably since the publication of both Sandy Stone's *The Empire Strikes Back*³⁵ and Kate Bornstein's *Gender Outlaws*,³⁶ some feminist, queer and/or transgender theorists have come to champion certain expressions of trans for their transgressive value.³⁷ Transgender lives have come to be celebrated in their seeming ability to represent "implicit, or better, explicit" critiques of the heterosexist gender order.³⁸ Trans theory is attractive because it is able to call into question the socially-mandated and rigidly policed understanding that there is such a thing as gender-appropriate behaviour. Concomitantly some feminist, queer and/or transgender theorists have come to celebrate the critical potential of 'transgressiveness'. Many others, transgender people and theorists alike, have come to read this celebration as devaluing of their lives and work.³⁹ In this celebration, there is often "a homogeneous conceptualisation of trans" – a critique most often levelled at the fields of feminism, sociology and queer theory along with human rights-centred approaches.⁴⁰ Queer, in particular, has garnered much from the transgender questioning of the supposedly stable relationship of sex, gender, sexual practice and sexual desire. In doing so, it has challenged the correspondence between desires, identities, and practices and allowed for the disruption of both heterosexuality and homosexuality.⁴¹

Judith Butler's major contribution to understandings of gender⁴² has been the argument that all gender is performative: 'man' and 'woman' are not internal essences but rather constituted through repetition of culturally acceptable acts that signal their presence.⁴³ For Butler, 'woman' does not necessarily have to be the cultural construction of the female

³³ See: Raymond, J. G. (1994). *The Transsexual Empire: The Making of the She-Male* (Athene Series). New York: Teachers College Press.

³⁴ Davis, E. C. (2009). "SITUATING 'FLUIDITY': (Trans) Gender Identification and the Regulation of Gender Diversity." *GLQ: A Journal of Lesbian and Gay Studies* 15(1) (January 1), 97-130.

³⁵ Stone, S. (2006). The "Empire" Strikes Back: A Posttranssexual Manifesto. In S. Stryker & S. Whittle (Eds.), *The Transgender Studies Reader* (221-235). New York: Routledge.

³⁶ Bornstein, Kate. 1995. *Gender Outlaw: On Men, Women and the Rest of Us*. New York: Vintage.

³⁷ Elliot, P. (2009). Engaging Trans Debates on Gender Variance: A Feminist Analysis. *Sexualities* 12(1) p. 6.

³⁸ Ibid.

³⁹ Ibid., p. 5.

⁴⁰ Sanger, T. (2008). Trans governmentality: the production and regulation of gendered subjectivities. *Journal of Gender Studies* 17(1), 41-53.

⁴¹ Brown, G., Browne, K. and Lim, J. (2007). Introduction, or Why Have a Book on Geographies of Sexualities? In G. Brown, K. Browne & J. Lim (Eds.), *Geographies of Sexualities: Theory, Practice and Politics*. Hampshire: Ashgate Publishing, p. 8.

⁴² Although this work is not without critique.

⁴³ Butler, J. (1990). *Gender Trouble*. New York: Routledge, p. 89-90.

body, and 'man' need not interpret male bodies.⁴⁴ Indeed, the biologically-sexed body guarantees nothing, it provides the ground for the act of speaking but has no deterministic relationship to gender: "becoming" a gender is a laborious process of becoming *naturalized*, which requires a differentiation of bodily pleasures and parts on the basis of gendered meanings".⁴⁵ David Valentine, in agreement with Gayle Rubin, notes that separation is key to understanding transgender and homosexual identities as emanating from distinct ontological sources: transgender from gender and homosexual or heterosexual identity from sexuality. However, as a corollary he notes that scholars should be wary of reinstating binary systems – homosexual/heterosexual and gender/ sexuality – "things are not always so clear cut".⁴⁶ This is especially true as gender, sex and sexuality are not universal in their understanding or lived experience; Rubin stresses that in sex, sexuality and genders, "relationships are situational, not universal, and must be determined in particular situations".⁴⁷

Within this body of work, rooted/routed in the Global North, it is well-established that in the narratives of transgender 'crossing', of 'moving through the world', the ideas of borders, boundaries, and homes have come to play a central role. Jay Prosser in his book *Second Skins: The Body Narratives of Transsexuality* explains this as the 'trans' trajectory.⁴⁸ He argues that the story often told is one of a metaphorical crossing, mobilising gender as a category separating it from sex.⁴⁹ Prosser further highlights the role of narrative in explaining the travelling nature of identity and the travelling that needs to take place in order to recognise and access identity. In a critique of some of these narratives of mobility, Jack Halberstam warns that there is a danger in romanticising migrational ideas of home, borders and borderlands, because some people may be permanently dislocated.⁵⁰ Halberstam stresses that in theorising transgender it is important to acknowledge wider issues around mobility and access, outside of metaphor, within specific locales. Moreover Halberstam notes that the kind of movement that trans requires makes metaphors drawing on journeying, travelling and border crossing inevitable, "but they ... [these metaphors] ...

⁴⁴ Ibid., p. 263.

⁴⁵ Ibid., p. 89-90.

⁴⁶ Valentine, D. (2006). "I Went to Bed with my Own Kind Once": The Erasure of Desire in the Name of Identity. In S. Stryker & S. Whittle (Eds.), *The Transgender Studies Reader*. New York: Routledge, p. 409.

⁴⁷ Rubin, G. S, and Butler, J. (1994). Sexual Traffic. *Journal of Feminist Cultural Studies* 6(2), p. 35.

⁴⁸ Prosser, J. (1998). *Second Skins: The Body Narratives of Transsexuality*. New York: Columbia University Press.

⁴⁹ Prosser, J. (1998). *Second Skins: The Body Narratives of Transsexuality*. New York: Columbia University Press.

⁵⁰ Halberstam, J. (1998). *Female Masculinity*. Durham: Duke University Press Books, p. 164.

are also laden with histories of other identity negotiations, and they carry the burden of national and colonial discursive histories".⁵¹

Perhaps reflecting some of this critique, Talia Mae Bettcher (drawing on Maria Lugones) argues that there is no guarantee that English terms for gender – like transgender – will maintain or retain their English meaning. The possibility of terms resisting their English linguistic dominance is opened up as the geo- and body-politics of spaces of hybridity come into contact with them.⁵² In relation to the travel and taking up of transgender and its very situated meaning, Trish Salah, echoing Gayatri Spivak, has argued a point central to this thesis: that subaltern transgender positions

appear at the interstice of transnational sexualities and genders, modernisation and globalisation, and through the networks of global gay human rights discourse and Anglo-American transgender liberation. How these English language forms encounter, appropriate, or are translated by globally local "trans" constituencies raises questions of the political economy of identity movements and discourses".⁵³

In Africa, and in South Africa specifically, the emergence of the term within popular and academic discourses has been a fairly recent development. Since its arrival, however, there has been a proliferation of Non-Governmental-Organisations (NGOs), and debates, focusing on the presence and experiences of transgendered people – suggesting that South Africa has been a fertile ground for the production of a politics of transgender. In academic writing, it has appeared only marginally, although Tamar Klein,⁵⁴ Ruth Morgan, Saskia Wieringa⁵⁵ and Amanda Lock Swarr⁵⁶ have undertaken notable work. There are still major lacunae. Prosser's perceptions and understandings of the travelling inherent to transgender, along with Rubin's insistence regarding situatedness, and Halberstam's critique, provide – I believe – a critical entry point from which to begin considering the relation of transgender to the movement of bodies across and within different nation spaces, and the impact this might have. This thesis takes this suggested entry point, regarding both the travel and possible transformation of transgender. Indeed: homes, borderlands, and shifting are all central themes that animate this body of work, mapping over and onto each other – key tools for navigating the relationship between the term 'transgender' and the embodied subject.

⁵¹ Ibid.

⁵² Bettcher, T. M. (2014). Trapped in the Wrong Theory: Rethinking Trans Oppression and Resistance. *Signs*, 39(2, Winter) p. 383-406.

⁵³ Salah, T. (2014). Subaltern. *TSQ: Transgender Studies Quarterly*, 1(1-2) p. 202.

⁵⁴ Klein, T. (2009). Intersex and transgender activism in South Africa. *Liminalis* 3, p. 15-41.

⁵⁵ Morgan, R., & Wieringa, S. (2006). *Tommy Boys, Lesbian Men, and Ancestral Wives: Female Same-Sex Practices in Africa*. Auckland Park: Jacana Media.

⁵⁶ Lock Swarr, A. (2008). Moffies, Artists, and Queens: Race and the Production of South African Gay Male Drag. *Journal of Homosexuality* 46(3), p. 73-89

The People: 'Gender Refugees'⁵⁷

What of the embodied subject, though? A mapping of the movements and machinations of the term raises hitherto unexplored questions about the individuals who see themselves encompassed by the term 'transgender', and their associated experiences and struggles. One such group or individual, which I argue has emerged and journeyed alongside the movement of transgender is what I have termed the 'gender refugee'. The concept of a refugee, in a legal sense, comes from the mass shifting of people after both World Wars. In 1951, the UN passed the Geneva Convention relating to the Status of Refugees. The Convention defines a refugee as:

Any person who is outside their country of origin and unable or unwilling to return there or to avail themselves of its protection, on account of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group, or political opinion.⁵⁸

Prior to 1990, claims to refugee status based on sexual or gender-based persecution were not recognised within the Convention.⁵⁹ International lesbian, gay, bisexual and transgender (LGBT) organisations rallied around notions of sexual orientation and gender identity as human rights, building an increasingly influential lobby. The 2006 *Declaration of Montreal* proposed the creation of UN Convention directly addressing the elimination of all forms of discrimination based on sexual orientation or gender identity. This was followed by the creation of the *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*.⁶⁰ In direct correlation with these wider social changes, there has been a growing body of work focusing on the sexual refugee – a person who makes claims to refugee status based on the persecution of their sexual orientation.

The first asylum seekers began to trickle into South Africa post 1994, at the dawn of the new democratic era, although it was not until the new millennium that the country could recognise refugees and asylum seekers legally through the Refugees Act. It is unsurprising that, since its inception, those fleeing persecution have made their way to the country that is widely considered the most multicultural and egalitarian state on the continent, especially given the growing antagonisms across the continent regarding human rights, issues of

⁵⁷ Note: English pronouns are problematic when writing for, or about, transgender or gender-nonconforming communities. For some, to be transgender is to reject or feel oneself to be outside of binary gender categorisation, thus the singular pronouns 'he' or 'she' are inappropriate and inadequate. I have acknowledged participants' preferred pronouns throughout this thesis. These are limited to he, she and they.

⁵⁸ Goodwin-gill, G. S. (2008). Convention Relating to the Status of Refugees Protocol 1951 Relating to the Status of Refugees 1967. *United Nations Audiovisual Library of International Law*: 1-9. <http://www.un.org/law/avl/>.

⁵⁹ Ibid.

⁶⁰ Kollman, K. and Waites, M. (2009). The global politics of lesbian, gay, bisexual and transgender human rights: an introduction. *Contemporary Politics* 15(1), p. 4-5.

sexuality, gender identity/expression and sexual orientation, the legacy of colonial era penal codes, and a rise in a particular kind of unrelenting heteronormativity.⁶¹ In a 2005 report addressing migration in the Southern African region entitled *Gender and Migration: The Overview Report*, Suzie Jolly and Hazel Reeves highlighted that transgender people, a highly mobile population, often migrate across borders in order to escape discrimination and abuse from communities of origin.⁶²

Yet, there has been little systematic research on this particular element of asylum and migration at a global, regional or state level. In general, work addressing asylum and migration internationally has either tended to focus on 'LGBTI' or 'queer' asylum seekers. Within these discussions the focus, possibly due to sheer numbers, is usually on those experiencing discrimination on the basis of sexual orientation – those who identify as only gay or lesbian. Certainly, there is overlap in prejudice and the experiences of discrimination for those grouped within LGBTI, but there are also experiences which are unique to people with specific gender identities that are considered to deviate from society's dichotomous expectations.

Very recent explorations by Sima Shakhsari⁶³ addressing the experiences of transgender-identified refugees and asylum seekers in Turkey, are some of the limited examples of work addressing the lived experiences of transgender-identified refugees and asylum seekers – gender refugees. Shaksari's scholarship clearly suggests, returning to Halberstam, that outside of the Global North, the journey is not, and cannot be simply understood as, metaphorical.⁶⁴ Indeed, their work makes clear, as with Salah's arguments, that the meaning of gendered and transgendered bodies remains complicated by, and dependent upon, the spaces and perhaps national homes they inhabit. This thesis places itself firmly within this emergent body of scholarship. Certainly for gender refugees on the African

⁶¹ In 1996, South Africa became one of the first countries in the world to protect people from discrimination on the basis of sex, gender and sexual orientation. To what extent it was believed that 'gender' encompassed transgender in the imagining of the Constitution is questionable; regardless, transgender groups have slowly won rights utilising this non-discriminatory stance since 1996. This has been perhaps most visible in the advent of Act 49, 2001, *The Alteration of Sex Description and Sex Status Act*, which allows for legal adjustment of one's sex on identity documents without having to undergo surgery. In light of international norms and laws which often require invasive surgery before gender identity can be re-assigned, this law in and of itself is ahead of many of its Western counterparts. South Africa also allows for access to biomedical care and body-altering surgery in order to address the needs of those transgender people who wish to transition. Access is often difficult and costly but the state does provide a handful of surgeries yearly.

⁶² Jolly, S. & Reeves, H. (2005). *Gender and Migration: The overview report*. *Institute of Development Studies*, p. 11.

⁶³ Shakhsari, S. (2013). Transnational Governmentality and the Politics of Life and Death. *International Journal of Middle East Studies*, 45(02) p. 340–342.

⁶⁴ Boyd, N. A. (2006). Bodies in Motion: Lesbian and Transsexual Histories. In S. Stryker & S. Whittle (Eds.), *The Transgender Studies Reader*. New York: Routledge, p. 430.

continent, this move to South Africa raises questions about the imagined South Africa they come to believe they will find, and suggests particular politics and meaning for transgender. Transgender-identified people who enter the country do so because they believe something exists here that does not exist for them in their country of origin. It is arguable that those who decide to stay imagine a new ‘home’ for themselves. As Halberstam notes, “the place from which one theorises ‘home’ ... completely alters the models of gender and sexuality one produces”.⁶⁵ There is, I believe, a nuanced interplay between the imagined South Africa and transgender, the journey to this imagined place, the reality of this place and, drawing from Vivian Namaste, the stories of the everyday produced to explain this place and the subsequent existence therein.⁶⁶

Vivian Namaste has been critical of how institutions, for instance asylum, manage the lives of transgender people, although as a corollary, she also argues that one of the most severe limitations of what she terms Anglo-American scholarship on trans people is that it lacks “any sustained analysis of how ... [transsexual/transgender] ... people are situated (and/or situate themselves) outside institutions”.⁶⁷ In some ways, South Africa due to its politics, placing and peculiar history presents a unique opportunity to understand how gender refugees are situated in relation to the institution of asylum – locally, regionally and internationally. As James Willets notes, asylum as a fundamental human rights issue in relation to sexual orientation and gender identity “is truly a product of international law ... in almost no other area of international human rights law is the dialectic between national and international law so pronounced”.⁶⁸ In tracking the emergence of transgender phenomena, and establishing a genealogy of transgender in South Africa, this thesis is able to offer some insight into how South Africa is able to offer asylum to gender refugees. This discussion of institutions and management allows transgender to function as an analytic posing wider questions about the necessity of gender as a category of classification, the impact and reality of human rights and viability of transgender lives more broadly.

“across”, “beyond”, “through”

Gender refugees and asylum seekers, those that I have interviewed within this thesis, arrive carrying their dresses and heels. Some, like Akraam from the Horn of Africa or Siya from Southern Africa, arrive with nothing but the clothes on their backs because their very bodies are a burden they describe as having to ‘carry’ across rivers, through fence holes and

⁶⁵ Halberstam, J. (1998). *Female Masculinity*. Durham: Duke University Press, p. 148.

⁶⁶ Namaste, V. K. 2000. *Invisible Lives: The Erasure of Transsexual and Transgendered People*. University Of Chicago Press.

⁶⁷ Ibid., p. 269.

⁶⁸ Willets, J. D. (1997). Conceptualizing Private Violence Against Sexual Minorities as Gendered Violence: An International and Comparative Law Perspective. *Albany Law Review*, 60, p. 1043.

over open tracts of land, stalked by animals and humans alike. Carrying anything else would draw unnecessary additional attention. Still others, like Tom, arrive from East Africa with the last of their testosterone – just enough to see them through until they can find adequate medical access. Some, like Tricia leave their home countries, following other ‘sex-changers’ and ‘transgenders’ who have accessed gender-affirming healthcare or ‘experiments’ in South Africa, whilst others like Maxine, Chifundo and Nelly in some way follow Tricia following ‘transgenders’. Some, like Alex, fled Central Africa because their parents tried to inject them with petrol or have forced them to undergo spiritual cleansing to release the ‘demon possessing them’, or – as in the case of Bobbie, from Southern Africa – are given money by their parents and are told to leave with the hope of having a better life, a chance at survival.

Still others, like Kelly and Daniel, both from East Africa, have been locked in compounds, hidden in safe houses, forced to empty their bank accounts, beaten, chased or threatened and slashed with machetes. Then there are those like Ava from Central Africa, and Arthur and Eshe, from Southern Africa, who enter South Africa on official business – usually work, study or conference attendance – and stay because they are told it would be impossible for them to return: their very presence in their country of origin poses a threat to either themselves or their communities, friends and families. For others like Tatenda from Southern Africa, this threat to their family is the very reason for their departure in the first place. Sometimes gender refugees are notorious, and hounded by the media, their details published in the local newspapers – a “Top 100 Gay”. Sometimes they have simply chosen to attend the funeral of a fallen comrade and as a consequence have exposed themselves on national television. Others, like Victor from East Africa, have decided that they will not hide, facing the television screens, suing states, calling for justice and rights until it becomes impossible to stay; or, like Tiwonge, until their ability to remain invisible is lost in the act of pursuing what for many would seem prosaic – marriage.

For gender refugees and asylum seekers there is always prior knowledge of South Africa gleaned from radio, television, the Internet and other cultural influences such as music. This is not only true of gender refugees – “everyone knows about South Africa”⁶⁹ – the country that has rights, a Constitution, is ‘gay friendly’ and according to East African Stella, the home of “special music – Weekend Special like Brenda”⁷⁰. Even assailants inform their targets “we will kill you: go overseas or go to South Africa”.⁷¹ If knowledge about the country isn’t syphoned directly from media then it is unwittingly spread by churches as Ava, from Central Africa, explains:

⁶⁹ Alex

⁷⁰ Stella

⁷¹ Tricia

So in that church in Nairobi when we were praying for Cape Town, praying for Africa, praying for South Africa not to get this bad thing from the West and from white people – that was how I got information ... It was like an advert because remember in that day they were praying for gays and lesbians, the bad spirit evil of gays and lesbians in Africa and somehow they said we must pray for Cape Town because it is becoming the cursed city of Africa. We had to pray for Cape Town. We had to pray for South Africa for the Constitution accepting gays and lesbians. I was sitting in the crowd, I was part of the worship team but for me it was like information. Oh my gosh South Africa accepts gays and lesbians!⁷²

For some, South Africa was not the ideal choice. They would have preferred America, Canada or Europe. They may have even planned to get to those destinations. For others, it was the only choice, holding onto the hope of being able to identify as transgender while still remaining on the African continent. This by no means suggests that their route was direct; in fact, this was rarely the case. Several participants attempted to ‘live’ in other countries, often closer to their country of origin, before making their way to South Africa. Akraam, assigned male at birth, was one of the only participants who, after being told that she would have to marry her cousin, set off in completely the opposite direction. To her this impending marriage was an impossible expectation given that the bride to be “was like a sister” and that the intended groom, though the family considered them a man, identified as a woman. Having heard about the possibility of safety for people ‘like them’ in a small section of an Arab state, they, like many participants, left with no warning – relying on smuggling rings and shifting across borders in ways most states would consider duplicitous.

I take a bus. It is a long distance to where you take a boat ... is like three days by bus ... they kept us – you know the illegal immigrants who want to travel by boat – they kept in small safe house so that the local government ... doesn’t see what is going on. At night they took us from that house to the sea. It cost something like less than \$25. Then they put you in a small boat. Two nights in the sea ... No space. Sitting like this 70 people. It was horrible. There was no toilet, people like vomiting on you and it was disgusting ... You take your food with you but you can’t even eat. In the middle of the night you land with the boat ... and then they just leave you there ... we walk away from there ... maybe 20 minutes then we find a road and then we put our fingers like this [hitchhiking] to get a lift ... nobody stops ... some of the people they walk away. Me and two other ladies we couldn’t walk. We were so tired we sat there in the road ... [eventually a small truck stops] ... so they put us with the sheep ... into the city ... I have stayed in Yemen ... for six months. Life was horrible there ... which makes me to move on again to Saudi Arabia and then they captured me. When you are illegal in Saudi Arabia they will deport you to whatever country you originate from ... They capture you and they keep you in prison for thirty days because you are illegal ... they have to punish you so that you don’t come back.⁷³

This circuitous and evidently exhausting journey is emblematic of many participants’ movements towards South Africa. Experiences of arrest, harassment, being chased, denigrated, or summarily deported are common threads. Deportation was equated with certain death, since it seems that the initial exit of an individual from their home community or family is often read as self-acknowledgement of guilt and deviance. Two participants

⁷² Ava

⁷³ Akraam

were arrested and accused of being spies as a means to explain the fact that they were people evidently assigned male at birth, presenting and living as women. As Sasha explains:

I've been beaten [in] a prison for soldiers not for normal people ... military prison ... They were thinking that I am a spy ...[that]... I dressed like a woman to spy [on] people ... but they've been making a lot of investigation ... all of my friends ... say that they told them how I am since I was young; they did not understand about me ...⁷⁴

Although all participants could have applied for asylum and could not return, or had no plans to return, to their countries of origin, not everyone utilised the asylum system to regularise their stay. Three participants arrived on study visas, one of whom applied for asylum, while the others have creatively manoeuvred between work and study visas to ensure that they don't have to return to countries of origin. Only one participant came to South Africa on a work visa intending eventually to use this as a means of accessing permanent residency status. Of those who have applied directly for asylum, the majority have applied on the ground of sexual orientation. Akraam is the single exception here in that they claimed asylum based on war in their country of origin – a common and believable claim for people from this particular country of origin. During the period of research for this thesis, only three applicants had received refugee status – Akraam, Alex and Tiwonge – one of whom paid for their status, another who was certainly assisted via external pressures, given that they were resettled fairly soon after receiving status, and the last was most certainly due to their status as a fairly high-profile refugee.

All participants had identified as gay, at some point, outside of South Africa, but felt this was insufficient because it did not explain their relation to their gender identity or expression. All were accused, at some point in their lives, of being boys who acted like girls or vice versa. In all cases, the word 'gay' – a word with a far wider circulation – was something heard in the media or used pejoratively by religious or political leaders. The word 'transgender' was introduced through contact with organisations or 'educated' individuals in countries of origin. This is not to say that transgender has had no media traction: at least two participants came across the term in a magazine article (one of whom carried that article, which also contained the contact details of a local transgender organisation, in her pocket across the border into South Africa). Most often, though, it was introduced by NGOs at conferences, seminars or workshops as an explanation or term for feelings relating to gender, as Kelly explains:

We had a conference about transgender ... when they started translating those transgender, lesbian blah blah blah ... it was about LGBT ... to see all people where to begin because ... people they mistake where to go. Others say they are lesbians but they are not lesbians. Others pointed out that

⁷⁴ 'Sasha'. Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at 'Gender Dynamix Collection – GAL108', Johannesburg, William Cullen Library, University of the Witwatersrand.

they are gay but they not gay ... And that's how they explained it, if you like to be like a woman then you are transgender.⁷⁵

For the most part, those who came to identify with the term through organisational contexts were (although assigned male) already expressing their gender as women, most predominantly through dress and make up. Only one participant came to identify as trans because they lived with other trans-identified people and were often asked by clients whether they were a 'she-male'. For several participants, the Internet – including YouTube and the ability to 'Google' the meaning of the term – was a key source of further information. Only two participants – Akraam and Ava – were introduced to the term or the meaning of the term in South Africa: both, perhaps surprisingly, by Muslim or Christian LGBT/queer religious organisations.

By and large, the majority utilised a combination of words to describe themselves, including 'a drag', 'ladyboy', 'a sis', 'a butch', 'a queen' and several others. All of these function along personal circuits of recognition where transgender plays roles of varying importance. For some, 'transgender' is a term that describes their gender presentation and expression, in most cases here, that of 'being', 'presenting' or 'feeling like' a woman; alongside this, 'gay' is often used to describe the sexed body as assigned at birth and the attraction felt to people assigned the same sex. According to participants, one may be both gay and trans, but rarely trans and gay. Three participants, though transgender, do not identify as such but rather identify as either men or women – adhering to binary genders – and consider transgender as a means to explain a segment of their life's journey. In all cases, there is a feeling or sense of self-expression that predates the terminology. Cleo, a trans woman from Uganda and the subject of a recent web series *The Pearl of Africa*, provides some insight into how the shift from gay to transgender might happen for *some* participants, noting the "wrongness of gender having to be sexualised," which she began to question in her twenties.⁷⁶

I knew I wasn't gay, but I didn't know what I was. I didn't have the language [and] even when I got the language, it was not affirming ... when the LGBTI community started in East Africa people didn't question the language in the beginning. A lot of detail and nuance is lost.⁷⁷

The majority of participants have experienced extreme forms of violence and harassment: notably, this was more frequent for those presenting in ways read as female or feminine. This may help to explain the prevalence of transgender women within the asylum system and as gender refugees more broadly. Transgender men find it far easier, and are

⁷⁵ Kelly

⁷⁶ Opar, J. (2015, December 15). A Story Of Radical Love And Acceptance In "The Pearl Of Africa." Retrieved December 17, 2015, from <http://www.okayafrica.com/news/radical-love-and-acceptance-in-the-pearl-of-africa/>

⁷⁷ Ibid.

more likely, to assimilate into society, as one participant was at pains to explain. They are overall less visible, find it easier to pass as men and find wider social acceptance. Several participants have accessed gender-affirming healthcare in South Africa: the majority through government or state run hospitals, a smaller number have been able to self-fund certain elements. A singular participant – Tom – was able to access gender-affirming healthcare in another country, while studying, before coming to South Africa. Part of their decision to come to South Africa was the fact that as a transgender man it is quite possibly the only country on the continent that has regular, legal and secure access to testosterone. To be clear though, not all participants desired any form of gender-affirming healthcare, several simply wanted to present in ways with which they felt comfortable. In some instances, this simply translated into the ability to wear the dresses they had so carefully carried into the country, without fear of harassment.

A prefix occurring in loanwords: (trans)Continental

Transgender has both trails and tales. In recent years, there has been a sizeable shift in the publicly-available knowledge and representation of transgender people globally and also somewhat regionally and locally. This is due to a combination of long-standing transgender activism finally coming to fruition, the shift in perceptions of ‘gay rights’⁷⁸ – including the ever-controversial move towards ‘marriage equality’ in the Global North – and the global proliferation of access to the Internet and digital media. This has seen the likes of Caitlyn Jenner, Laverne Cox and Janet Mock – amongst a host of names in the Global North – gain a certain kind of fame. They have also come to represent a particular, arguably ‘respectable’, notion of transgender, of which both Cox and Mock are self-critical.⁷⁹ This ‘Transgender Tipping Point’,⁸⁰ as media in the Global North have come to call it, has come to represent a particular ‘face’ of transgender that involves transitioning, normative (white) beauty standards, and a kind of visibility that does not equate to acceptance or safety for other kinds of trans expression and/or nonconformist identities.⁸¹ Enmeshed within this has been

⁷⁸ For Susan Stryker there is cause for concern regarding a type of ‘progress narrative’ prevalent in the US, in particular where transgender issues have become the “next big thing” following the ‘achievement’ of gay rights. See: Pasulka, N. (2015, May 14). *The Academic Behind the Media's 'Transgender Tipping Point'*. Retrieved March 28, 2016, from <http://www.theawl.com/2015/05/the-academic-behind-the-medias-transgender-tipping-point>

⁷⁹ Carbone, C. (2014, February 3). Redefining Realness: Janet Mock on the Transgender Experience [Web log comment]. Retrieved March 26, 2015, from http://www.slate.com/blogs/outward/2014/02/03janet_mock_on_redefining_realness_an_interview_with_the_transgender_author.html

⁸⁰ Steinmetz, K. (2014, June 9). The Transgender Tipping Point – America's Next Gender Frontier. *Time Magazine*, p. 38-46

⁸¹ Vaid-Menon, A. (2015, October 13). Greater transgender visibility hasn't helped nonbinary people – like me. *The Guardian*. Retrieved March 31, 2016, from

a growing debate over, and visibility of, the treatment of transgender women of colour in particular. This conversation has focused on those incarcerated in the United States deportation centres run by the US Department of Homeland Security's Immigration and Customs Enforcement Agency (ICE). The plight of transgender asylum seekers and undocumented immigrants in the US reached perhaps one of its most public moments in 2015, when Jennicet Gutiérrez, an undocumented trans woman involved in immigration activism, widely dubbed in the media as 'a heckler' demanded that the US President release all LGBTQ immigrants in detention.⁸² At the same time, regardless of this visibility, transgender people in the US experience increasing rates of violent crime and exclusion.⁸³ In 2015 there were 20 reported killings of transgender women in the United States alone.⁸⁴

On the African continent, the contradictory tensions that seem to suffuse issues of gender in relation to sexuality continue. While transsexual artist Titica was heralded as "taking Angola by storm"⁸⁵ and went on to become Angola's 'transsexual UN Ambassador', as appointed by UNAIDS,⁸⁶ spates of attacks and arrests continued in several countries.⁸⁷ The number of African individuals who have sought asylum in the Global North specifically has also grown exponentially, quite possibly establishing a new class of gender refugees⁸⁸ – those of diasporic movements and groupings like the Kuchu Diaspora Alliance.⁸⁹ In Kenya, transgender activist Audrey Mbugua has become, in some ways, the public face of transgender activism, winning a court battle to have her organisation registered in July 2014 followed by the right to have her name changed on her school certificate in October of the

<http://www.theguardian.com/commentisfree/2015/oct/13/greater-transgender-visibility-hasnt-helped-nonbinary-people-like-me>

⁸² Rivas, J. (2015, August 3). *Meet the transgender immigrant activist who interrupted President Obama*. Retrieved August 22, 2015, from <http://fusion.net/story/175990/jennicet-gutierrez-interrupted-president-obama/>

⁸³ Tourjee, D. (2015, December 16). *Why Do Men Kill Trans Women? Gender Theorist Judith Butler Explains*. Retrieved December 16, 2015, from https://broadly.vice.com/en_us/article/why-do-men-kill-trans-women-gender-theorist-judith-butler-explains

⁸⁴ Tourjee, D. (2015, December 16). *'He's Not Done Killing Her': Why So Many Trans Women Were Murdered in 2015*. Retrieved December 17, 2015, from https://broadly.vice.com/en_us/article/hes-not-done-killing-her-why-so-many-trans-women-were-murdered-in-2015

⁸⁵ Redvers, L. (2012, April 12). *Transsexual artist Titica takes Angola by storm*. Retrieved December 1, 2015, from <http://www.bbc.co.uk/news/world-africa-17628726>

⁸⁶ Redvers, L. (2013, October 7). *Angola's transsexual UN ambassador*. Retrieved December 1, 2015, from <http://www.osisa.org/lgbti/blog/angolas-transsexual-un-ambassador>

⁸⁷ Iranti Media. (2015, November 26). *They Want to See Me Dead* [Online Mini Documentary]. Video posted to https://www.youtube.com/watch?v=-L6vMR4d_dY

⁸⁸ Mukasa, V. (2013, October 10). *Uganda is Home*. Retrieved May 26, 2014, from <http://www.immigrationequality.org/tamaras-journey-a-story-of-hope/>

⁸⁹ Mukasa, V. (n.d.). *Kuchu Diaspora Alliance – USA*. Retrieved August 20, 2014, from <http://www.kuchudiasporaalliance.org/>

same year.⁹⁰ In August 2015, Solomon Gichira, an LGBT rights activist petitioned for the Kenyan High Court to establish a third gender category for people who do not identify as male or female.⁹¹ Notably, Gichira filed the claim in the hopes of addressing the needs of “transgender, intersex and gender non-conforming people”.⁹² At the same time, a growing number of LGBT asylum seekers, mostly from Uganda, continue to struggle in the Kakuma Refugee Camp, hoping for resettlement by the UNHCR.⁹³ In Zimbabwe, a trans woman made international headlines after she was arrested and strip-searched for having used the women’s toilet.⁹⁴ In Nigeria, television network Multichoice dropped the American television series, *I am Jazz*, a series about a transgender teen, from its schedule after Nigeria’s television regulator confirmed it had received several complaints.⁹⁵ The programme was subsequently pulled from all other African television networks.⁹⁶

In South Africa, a growing group of people have begun to shift into the new and as yet undefined terrain of genderqueer/non-binary identity.⁹⁷ Individuals have embarked on hunger strikes in order to have the sex markers on their documents legally updated, after delays and refusals from the South African Department of Home Affairs.⁹⁸ Politically, *The UCT: Trans Collective* emerged, placing their bodies at the forefront of a visceral anger at cisnormative exclusion, and espousing a radical revolutionary politics. They dared students and the wider public to address the needs of “black poor queer trans womyn [sic]”, and to

⁹⁰ Chigorimbo, S. F. V. (2015, November 27). *Africa: International – Where Are Diverse Gender Identities in the Sixteen Day Campaign?* Retrieved December 1, 2015, from <http://allafrica.com/stories/201511271282.html>

⁹¹ Matata, L. (2015, December 2). Identifying as Neither Male Nor Female, Some Kenyans Seek a Third Option on Official Documents. *Global Press Journal*. Retrieved December 2, 2015, from <http://globalpressjournal.com/africa/kenya/identifying-neither-male-nor-female-some-kenyans-seek-third-option-official-documents>

⁹² Matata, L. (2015, December 2). Identifying as Neither Male Nor Female, Some Kenyans Seek a Third Option on Official Documents. *Global Press Journal*. Retrieved December 2, 2015, from <http://globalpressjournal.com/africa/kenya/identifying-neither-male-nor-female-some-kenyans-seek-third-option-official-documents>

⁹³ Igunza, E. (2015, November 10). *Gay Ugandans regret fleeing to Kenya*. Retrieved December 1, 2015, from <http://www.bbc.co.uk/news/world-africa-34764968>

⁹⁴ Moyo, J. (2014, February 27). *Transgender Ricky Nathanson speaks out*. Retrieved December 15, 2015, from <http://www.newzimbabwe.com/NEWS-14620-Transgender+Ricky+Nathanson+speaks+out/NEWS.aspx>

⁹⁵ Mamba Writer. (2015, October 27). *DSTV gives in to Nigerian bigotry, pulls trans teen series*. Retrieved November 13, 2015, from <http://www.mambaonline.com/2015/10/27/dstv-gives-nigerian-bigotry-pulls-trans-teen-series/>

⁹⁶ Ibid.

⁹⁷ Bush, D. (2015, May 10). *I am genderqueer - comfortable with my identity at last*. *Mail and Guardian*. Retrieved August 15, 2015, from <http://mg.co.za/article/2015-04-10-00-i-am-genderqueer-comfortable-with-my-identity-at-last>

⁹⁸ Kings, S. (2014, October 9). *Transgender woman goes on hunger strike over ID application*. *Mail and Guardian*. Retrieved October 15, 2014, from <http://mg.co.za/article/2014-10-09-transgender-goes-on-hunger-strike-over-id-application/>

consider the nature and experience of structural violence that many bodies are forced to endure on a daily basis.⁹⁹

From Lesotho¹⁰⁰ to Cameroon¹⁰¹ to Algeria¹⁰² to Cape Verde¹⁰³, transgender has begun to appear more frequently in various news media, often as reporting on arrests, beatings, violations and murders. These are also most often the stories picked up by international news media. However, in general, there has been growing visibility of a group of people utilising the term in various ways to self-identify.

The aim of this thesis is not to pin down the term 'transgender' or provide a clearer or fuller definition that somehow represents 'Africa', but rather to stretch it, to look below and around it. To open the imaginary regarding its possible meaning but also to track its trajectory, influences and impact. Gender refugees and asylum seekers are certainly part and parcel of these wider local and global shifts, in some ways even an outcome thereof. What is clear is that terms, like human beings, travel; there is a materiality to the journey of the term 'transgender' but there is also much to discover in the details and phases of the embodied journey that interacts with and carries this term. As gender refugees become increasingly visible in the US,¹⁰⁴ Australia,¹⁰⁵ Hong Kong,¹⁰⁶ New Zealand,¹⁰⁷ Turkey,¹⁰⁸

⁹⁹ Ndelu, S. (2015, September 17). UCT: Trans Collective Listen! The time for black poor queer trans* womyn has arrived [Video file]. Video posted to <https://www.facebook.com/transfeministcollective/videos/1044182025648513/> trans people

¹⁰⁰ Matheka, L. (2015). *Lesotho opens up to transgender way of life*. Retrieved December 12, 2015, from <http://www.publiceyenews.com/site/2015/06/12/lesotho-opens-up-to-transgender-way-of-life/>

¹⁰¹ Laccino, L. (2014, October 10). Cameroon Frees Seven Transgender People Arrested for Violating Anti-Gay Law. *International Business Times*. Retrieved March 3, 2015, from <http://www.ibtimes.co.uk/cameroon-frees-seven-transgender-people-arrested-violating-anti-gay-law-1469435>

¹⁰² Sandels, A. (2010, March 30). Memoir sheds light on the life and struggles of Arab transsexual from Algeria. *Los Angeles Times*. Retrieved from <http://latimesblogs.latimes.com/babylonbeyond/2010/03/algerialebanon-randa-the-trans-tells-life-of-an-arab-transsexual-in-new-memoir.html>

¹⁰³ García, P. & Serena, M. (Directors). (2015). *Tchindas* [Documentary]. Producciones Doble Banda S.L.

¹⁰⁴ Castillo-Garsow, M. (2005). *An Odyssey to Asylum*. *Gay City News*. Retrieved November 25, 2014, from http://gaycitynews.nyc/gcn_353/anodysseytoasylum.html

¹⁰⁵ Findley, J. (2014, October 30). *Call Out to Support Trans Refugees Settling in Melbourne*. Retrieved October 30, 2014, from <http://gaynewsnetwork.com.au/news/call-out-to-support-trans-refugees-settling-in-melbourne-15538.html>

¹⁰⁶ Lam, L. (2013, November 17). *Transgender asylum seeker says she turned to prostitution to survive*. Retrieved June 16, 2014, from <http://www.scmp.com/news/hong-kong/article/1358103/transgender-asylum-seeker-says-she-turned-prostitution-survive>

Kenya,¹⁰⁹ Mexico¹¹⁰, Canada¹¹¹ and the UK¹¹², I believe that greater questions will be asked of the functionality of governance and administrative systems in relation to gender, administrative categories, the law, institutions and human rights. What needs to be understood is how terms, such as transgender, travel, how they are taken up and to what effect, particularly in relation to the materiality of both the bodies and the circumstances of people in local contexts. Understanding the migration of transgender, the term, to South Africa, how it became embedded and its meaning within this context may provide new insights into the wider understandings of transgender – its politics, what it does, what it may have the potential to do, and the meanings of gender.

Chapter Outline

The methodology chapter offers a reflexive analysis of my research experience. This chapter outlines my own positionality in relation to participants, highlighting what it might mean to be both an insider and outsider, having to trade and shift in language and identitarian understandings with regards to fieldwork. Drawing on decolonial epistemologies in particular borderland or ‘border thinking’ this chapter considers the need for a far more geopolitically situated understanding and approach to transgender. This chapter takes the ideas of borders, borderlands and homes – key strands to this thesis as a whole – and reads them as central elements of the research field. The methodology chapter draws on an unconventional method, that of a short story, inspired by the decolonial work of Gloria Anzaldúa as a tool to explain the ways in which bodies perceived as gender non conforming might work in concert to or against each other while also being situated as researcher and/or participant.

The first chapter addresses the emergence of ‘transgender phenomena’¹¹³ in South Africa’s history, beginning with the earliest instances of what can be understood as the

¹⁰⁷ Transgender refugee says NZ paradise (2014, August 30). *NZ Herald*. Retrieved October 10, 2014, from

http://mobile.nzherald.co.nz/news/article.php?c_id=1&objectid=11316450

¹⁰⁸ Shakhsari, S. (2013). Transnational Governmentality and the Politics of Life and Death. *International Journal of Middle East Studies*, 45(02), 340–342.

¹⁰⁹ Migiros, K. (2014, June 10). *Barry's Story: A transgender man from Burundi - Refugee Stories*. Retrieved December 12, 2015, from <http://stories.unhcr.org/gay-kill-p4136.html>

¹¹⁰ UNHCR. (2015, December 8). Stabbed 58 times, transgender woman flees El Salvador. Retrieved December 15, 2015, from <http://www.unhcr.org/566699f76.html>

¹¹¹ Fisher, G. (2014, August 3). *Iranian Transgender Refugee Struggles for Acceptance*. Retrieved August 8, 2014, from <http://www.cbc.ca/news/canada/british-columbia/iranian-transgender-refugee-struggles-for-acceptance-1.2725554>

¹¹² *Bradford transsexual asylum seeker fears abuse*. (2013, November 28). Bradford transsexual asylum seeker fears abuse. Retrieved November 28, 2013, from <http://www.bbc.com/news/uk-england-leeds-25136829>

¹¹³ Stryker, S. (2008). *Transgender History*. Berkley: Seal Press.

legislative curtailing of gender transgressive behaviour through the Disguises Act. This chapter follows the development of the interweaving relationship between medical knowledge and the law in relation to shifting perceptions around the unruly or transgressive body, and the eventual dissolution of this relationship. Drawing from the South African Medical Journal (SAMJ), this chapter follows the route of this medical knowledge back to the colonial metropole and argues that perceptions of deviance were clearly influenced by an investment in eugenics and the concomitant emergence of sexology. This commingling of eugenics and sexology is not necessarily new, but what is new is the focus on the role of gender and the maintaining of specific ideas of heteronormativity through the emergence of these disciplines in South Africa. Following from this, I argue that the Apartheid State's position since the 1960s was that sex was not immutable – that the body was malleable; this is suggested through the State's support (whether implicit or tacit) of sex change programs and clinics within the military and state-run hospitals. This growing visibility of sex change surgery in the public sphere from the 1960s into the 1970s dovetailed with the Apartheid government's anxieties regarding sexuality, in particular the perceived threat of homosexuality to the morality of South African society. Essentially, transsexuality was understood as the cure to homosexuality: a realignment of sex, a 'transing' of sexuality from homosexuality towards heterosexuality. This position, though challenged by religious groups and certain academics, was maintained by the State right into the 1990s. Alongside this, the cross-pollination of knowledge regarding the country's particular take on gender, sex and sexuality, between organisations and individuals in the US and UK, and individuals in South Africa, eventually lead to the establishment of The Phoenix Society: the first organisation in South Africa focused on gender-transgressive identities, including transgender individuals. The networking between Phoenix and international groupings was impressive, allowing for a transfer of language and information (though this was aimed largely at white audiences). It was this flow of illicit information across borders, in relation to the particular history and culture with regards to transgressive bodies in South Africa, that would eventually lead to the adoption of the term 'transgender'.

The second chapter builds on the analysis of the first but turns to a more recent South Africa, and a clearer genealogical analysis of the term transgender. More importantly, it outlines how the term developed from a discourse into the possibility of a politic. This chapter argues that moving into the new democratic era, the body fell away as something to be forcibly realigned in the service of heteronormativity. Bringing both the South African Constitution and the South African Refugee Act into focus, this chapter explores how asylum is made possible for those who might identify or be identified as transgender. Through a close reading of the Constitutional meaning of sexual orientation, sex and gender, alongside the possibilities of the Sex Description Act 49 of 2003, this chapter argues that South Africa's asylum regime is theoretically far more radical than has previously been acknowledged.

Moreover, this chapter troubles the identitarian politics of the Global North embedded within the spread of 'global gay'/LGBT human rights discourse, taken up by NGOs in relation to wider funding mandates and support networks. It notes that 'transgender' is a term that travels with a kind of normative load, taken up in very specific ways to signify specific allegiances in relation to both regional and transnational networks. It asks about the nature of this discourse and what the limits of its travel might be in relation to the bodies with which it comes into contact. In particular, a post-colonial reading of transgender is offered here, drawing on the story of Malawian Tiwonge Chimbalanga as a subaltern history that has refused co-option. This chapter asks what it would mean for a person to be seen as transgender, to be presumed to be transgender, but never to take on that term for themselves – to refuse that subjectivity.

The third chapter begins to unpack and answer what exactly transgender does, by looking at the relation of gender refugees to transgender within their countries of origin. This chapter argues that the discourse of transgender across the African continent is limited within the public realm and that, more often than not, those who identify as trans are presumed to be the epitome of homosexuality. This perception of otherness is often made known to them in their youth through external questioning of 'what' they are. This chapter suggests that a contextual reading of transgender specific to gender refugees allows for an understanding that some people move or live in a kind of borderland, where they present in ways which they consider transgender but use a variety of terms to enact their self-description. Sometimes their own homes present a zone of safety where families accept their children's gender transgressions and may even, in some cases, facilitate this, but it is often when transgressive children enter into society and disciplinary spaces such as school environments that their gender is read as both threatening and problematic. This chapter takes the work of Jay Prosser¹¹⁴, along with Jack Halberstam's¹¹⁵ critiques, regarding movement, migration and metaphor as it relates to trans individuals. These it puts those into conversation with Sara Ahmed's¹¹⁶ work on notions of home and strangers, in order to explain the role of transgender in relation to gender refugees, and address the imaginary of rights and freedom in South Africa.

Documents are critical means through which individuals traverse the world. The fourth chapter addresses the impact of several interlocking forms of documentation and border practices for gender refugees, noting that these are clear sites of tension in relation to transgender. More specifically, it asks about the work and value of transgender as asylum

¹¹⁴ Prosser, J. (1998). *Second Skins: The Body Narratives of Transsexuality*. New York: Columbia University Press.

¹¹⁵ Halberstam, J. (1998). *Female Masculinity*. Durham: Duke University Press Books.

¹¹⁶ Ahmed, S. (2000). *Strange Encounters: Embodied Others in Post-Coloniality*. New York: Routledge.

seekers come into direct contact with the South African state. It tracks the crossing of gender refugees into South Africa and their experiences attempting to enter the asylum system through approaching a Refugee Reception Office (RRO) managed by the aptly named South African Department of Home Affairs. In order to access a centre, asylum seekers are required to join either the 'men's' or 'women's' queue outside the RRO. The queues, based on normative – or what I argue are believed to be 'common sense' – perceptions of sex/gender, are the first of many hurdles that actively exclude and erase gender refugees. It functions as a means of surveillance, particularly as different regions are serviced on particular days, meaning that during a process of waiting for refugee status to be awarded and having to renew asylum documentation every one to three months, the same asylum seekers from the similar regions on the continent often gather together. This can make life for those who transition in South Africa doubly exposing as they possibly move between queues, witnessed by local communities. The chapter questions the necessity of an ever-ubiquitous system of gender/sex identification on documentation: current international developments are noted in relation to the development of a third gender category, 'X' category passports, the suppression of gender markers, and wider debates about the removal/necessity of sex/gender identifiers on documents in order to address the needs of transgender-identified people. It also unpacks the State's role in defining and differentiating between sex and gender.

After leaving the doors of the RRO, gender refugees ostensibly come face to face with life in South Africa. It is clear that South Africa offers a rigorous rights framework that theoretically provides protection and acknowledgement of gender refugees. However, in practice, the ways in which that recognition is offered to transgender-identified people, as this chapter will argue, erases the possibility of existence. Those who, as one participant notes, "chase rights" are the most likely to find themselves excluded, marginalised, in the borderlands, without community and struggling to survive. Drawing on Hannah Arendt's understanding of the human in human rights, chapter five argues that far from gaining freedom and access, gender refugees in South Africa experience an extreme loss of community, support and security. This socio-political erasure suggests something about the materiality and value of transgender within wider society. In essence, these refugees becoming stateless, having to rely on their 'humanness' to access rights, the very thing readings of their gender presentation generally deny them. At the same time, there are those who use the borderlands as a space of creative resistance and survival, circumnavigating systems of governance in order to pursue life in South Africa in specific ways which clearly relate to their transgender identity. This is easiest for those who fit systems of gender dichotomy and are read as normative – those who are read as human and therefore have rights conferred. This final chapter outlines the finitude of what transgender can actually offer in the face of the day-to-day realities of gender refugees. It

suggests that there are clear differences between the rights and framing of sex, gender and sexuality enshrined in the Constitution and what State governance systems assume regarding the stabilities/instabilities of the body – its sex/gender – as they relate to rights and the ability to access safety, protection, personhood, membership within a community, or simply a liveable life.

Methodology: Internal Borders – The Field and Methodological Choices

Susan Stryker's and Stephen Whittle's 2006 publication of the first edition of the *Transgender Studies Reader* (henceforth *the Reader*) arguably gave a name (and perhaps a home) to several bodies of work that have fundamentally influenced a variety of disciplines since the 1990s, not least of all Gender Studies and Queer Studies. In Stryker's introduction to *the Reader* she gives a clear outline of some of the key methodological tenets of the newly-emergent interdisciplinary field. This includes genealogy, often seen as the exploration of 'transgender phenomena', alongside a critical focus on the lived transgender experience and embodiment. In simultaneously tracking the conceptual journey of the term transgender from the Global North to South Africa and the physically-embodied journeying of gender refugees to South Africa, the methodological approaches inherent in Transgender Studies have been crucial, but they have not been drawn on uncritically.

According to Stryker, the "embodied experience of the speaking subject" must be analysed alongside transgender phenomena, and it must also be recognised as a defining boundary of these phenomena.¹¹⁷ In essence, "transgender studies considers the embodied experience of the speaking subject, who claims constative knowledge of the referent topic, to be a proper – indeed essential – component of the analysis of transgender phenomena".¹¹⁸ As is clear then, the embodied subject – or in decolonial terms, the 'knowing subject' – is of crucial importance. Decolonial epistemology – particularly Gloria Anzaldúa's work, which theorises borderlands and borderland existence – has a foundational strand in Transgender Studies. This is seen most clearly in Sandy Stone's seminal text, *The Empire Strikes Back: A Posttranssexual Manifesto*.¹¹⁹ This was one of the first works which sought to shift transgender people from objects of study to subjects.¹²⁰ The decolonial analytic "is always attentive to the colonial aesthetics and epistemic differences and to the need to delink, to think in terms of options rather than presupposing one single option (universal)".¹²¹ Decolonial theory itself is not a unified body of thought; rather it consists of a body of diverse writing by thinkers who can be grouped only loosely under this approach.

¹¹⁷ Stryker, S. (2006). (De)Subjugated Knowledges: An Introduction to Transgender Studies. In S. Stryker & S. Whittle (Eds.), *The Transgender Studies Reader*. New York: Routledge, p. 12.

¹¹⁸ Ibid.

¹¹⁹ Stone, S. (2006). The "Empire" Strikes Back: A Posttranssexual Manifesto. In S. Stryker & S. Whittle (Eds.), *The Transgender Studies Reader*. New York: Routledge.

¹²⁰ Bettcher, T., & Garry, A. (2009). Transgender Studies and Feminism: Theory, Politics, and Gendered Realities – Introduction. *Hypatia*, 24(3), p. 3.

¹²¹ Mignolo, W. (2013). On Comparison: Who is Comparing what and why? In R. Felski & S. S. Friedman (Eds.), *Comparison: Theory, Approaches, Uses*. Baltimore: John Hopkins University Press, p. 106.

So much of this thesis has focused on the many intersecting levels and meanings of home, homing and the boundaries or possibilities of such an edifice, all core elements to Transgender Studies; it thus seems only right that this thinking should carry across into methodological arrangements. Border thinking or borderland epistemology, a key element to decolonial methodological approaches, has been an invaluable tool in this instance. Border thinking makes room for a shift away from some of the problematics inherent within the Global Northern narrative of transgender or the ‘trans trajectory’: something Walter Mignolo would find akin to the “hubris of the zero point”.¹²² I heed Keguro Macharia’s words regarding the knowing subject. He suggests that so much of the work that has emerged from Africa currently overlooks the post-colonial and seems to make the names of homophobic leaders notorious, disregarding and possibly erasing African queer lives while doing so. He stresses that we cannot continue to “promote research methods that are indifferent to African intellectual production and methodological innovation”.¹²³ Indeed, if the methodological approaches of Transgender Studies present “vital and generally relevant critical/political questions ... compacted within the theoretical articulations and lived realities of ‘transgender’ embodiments, subjectivities, and communities ... [linked to] ... questions of space and movement”¹²⁴ then it is, I believe, decolonial approaches which provide tools to address these questions of space and movement in relation to epistemic difference.

In this chapter, I consider my experiences in the field and provide some reflexive analysis noting the disruptive experiences I felt on a personal level, being both a type of insider but also a type of outsider, having to trade and shift in language and identitarian understandings. This chapter seeks to engage with some of the challenges of doing research with individuals whose own access to things as commonplace as a name of their own choosing by which to be identified is often cut off from them in bureaucratic realms. Importantly for this work, Anzaldúa – although speaking to a queer inhabitancy of the border – argues for the necessity of geographical and bodily location in theorising positionality and experience. Drawing from this, I use a somewhat unconventional tool within this chapter, inspired by Anzaldúa’s work: that of a short story. I use this story of an interaction with one of my research participants, as a means to explain what shifting and borders might entail between participants and researchers, and the questions that gender non-conforming bodies can raise in relation to one another. As Mignolo adds, border thinking is a project that moves beyond the mind-body dualism so prevalent in Western

¹²² Mignolo, W. D. (2009). Epistemic Disobedience, Independent Thought and De-Colonial Freedom. *Theory, Culture and Society*, 26(7-8), p. 1.

¹²³ Macharia, K. (2015). Archive and Method in Queer African Studies. *Agenda*, 29(1), p. 145.

¹²⁴ Stryker, S., Currah, P., & Moore, L. J. (2008). Introduction: Trans-, Trans, or Transgender? *Women’s Studies Quarterly*, 36(3 & 4 Fall/Winter), p. 12.

thinking. It is an effort “to combine the body with writing, writing with the body and not just in the body, combine the heart with the mind”.¹²⁵

Transgender Studies - The Archive

Genealogy, according to Foucault, does not inquire into the timeless conditions which endure in the subject throughout history, but rather examines “the constitution of the subject across history which has led us up to the modern concept of the self”.¹²⁶ At the outset, this thesis has asked not simply what ‘transgender’ means in South Africa or what it really refers to, but in Foucauldian terms, “how and to what effect is the concept deployed: what does it *do*?”.¹²⁷ This has particular bearing when considering the journey or migration of the gender refugee towards the imagined South Africa – a country that ostensibly holds or presents a notion of transgender. Katie King adds that in looking at genealogy it is important, in line with a poststructuralist investigation, to understand the political power and use of language and meaning.¹²⁸ Arguably, the very porousness of transgender enables the possibility of varied, situated uses and meanings: no use is purely denotative and neutral, whatever the initial intention.

Bodies only become visible, and by extension disciplined and governable, in their naming. However, the meaning of this naming is not fixed; rather, it is situated within specific networks of knowledge and power. For Foucault, discourse is generative. Forms of subjectivity, for instance ‘to be transgender’, are intimately connected to discourse.¹²⁹ To be clear, a positivist history would assume that transgender people had existed throughout time and attempt to claim those that had previously been misidentified. Genealogy suggests that this misidentification is not simply due to incomplete history but rather the historic variability of categories that have organised, and continue to organise our understandings of identities and bodies. Within Transgender Studies, the useful grouping of ‘transgender phenomena’ provides a platform from which to undertake a genealogical analysis considering context, particularly location – that of being outside of the Global North. I have anchored this genealogical enquiry in the first moments of a legal position on gender

¹²⁵ Mignolo, W. D. (2013, October 23). *On Pluriversality*. Retrieved May 15, 2015, from <http://waltermignolo.com/on-pluriversality/>

¹²⁶ Foucault, M. (1993). About the Beginning of the Hermeneutics of the Self: Two Lectures at Dartmouth. *Political Theory*, 21(2), p. 202.

¹²⁷ Ferguson, J. (1999). *Expectations of Modernity: Myths and Meanings of Urban Life on the Zambian (Perspectives on Southern Africa)*. University of California Press, p. 206.

¹²⁸ King, K. (2002). “There Are No Lesbians Here”: Lesbians, Feminisms and Global Gay Formations. In A. Cruz-Malave and M. F. Manalansan (Eds.), *Queer Globalizations: Citizenship and the Afterlife of Colonialism*. New York: New York University Press, p. 41.

¹²⁹ Foucault, M. (1998). *History of Sexuality: 1*. London: Penguin Books, p. 94.

transgression: The Disguises Acts.¹³⁰ From this, I have woven together strands of the shifting social and political developments which, this thesis argues, are suggestive of emergent transgender phenomena. K. J. Rawson notes that transgender phenomena:

Involve both a material dimension (the collecting, maintaining, and accessing of transgender historical materials in a physical repository) and a theoretical dimension (the power dynamics, political motives, epistemological function, and affective currents of any archival project).¹³¹

These material archives do not overtly present transgender phenomena: rather the onus is on the researcher to tease these out, finding “choices, accidents and circumstances precipitating their creation”.¹³² The physical repository of the archival material used in this thesis was accessed at the Gay and Lesbian Memory in Action Archives (GALA): established in 1997, GALA, in its original iteration, aimed to address the absence of gay and lesbian existence and experiences within the South African historical landscape.¹³³ Following this, a substantial segment was also accessed online in blogs, news repositories and across social media. Graham Reid notes the following in relation to the perceptibility of gay and lesbian lives in African archives, “echoes of gay and lesbian lives are to be found in legal records, in police and military archives, in church commission reports, and in the records of psychiatric and social welfare departments”.¹³⁴

Keguro Macharia probes the metaphor of this echo, asking: who might haunt the archives?¹³⁵ He offers one of the first outlines of the relationship between archive use and archive production within what he calls African Queer Studies. I believe this outline can be read as a valuable critique across emergent disciplines which rely on or look to the archive. Notably, he argues that those who continue to be excluded from the archives include “sexual and gender dissidents whose class locations, ethno-racial identifications, labour practices, geographical positions (urban, rural, peri-urban, diasporic), and legal status

¹³⁰ Here I am referring to a collection of Acts in South Africa prohibiting disguise. Namely: *Transvaal Law On Masks, False Beards or Other Disguises*, no. 2 of 1891; *Criminal Law Amendment Act of Natal*, Act no. 10 of 1910 S6(2)E; *Cape Colony Police Offences Act*, no. 27 of 1882 SVIII(2); *Orange River Colony Police Offences Ordinance*, no. 21 of 1902 S25(2)

¹³¹ Rawson, K. J. (2014). Archive. *TSQ Transgender Studies Quarterly*, 1(1-2), p. 24.

¹³² Turner, W. (2000). *A Genealogy of Queer Theory*. Philadelphia: Temple University Press, p. 32.

¹³³ Hoad, N., Reid, G., & Martin, K. (Eds.). (2010). *Sex and Politics in South Africa*. Cape Town: Double Storey Publishers, p. 228.

¹³⁴ Reid, G. (2002). 'The History of the Past is the Trust of the Present': Preservation and Excavation in the Gay and Lesbian Archives of South Africa. In C. Hamilton, V. Harris, J. Taylor, M. Pickover, G. Reid, & R. Saleh (Eds.), *Refiguring the Archive*. Cape Town: David Philip Publishers, p. 194.

¹³⁵ Macharia, K. (2015). Archive and Method in Queer African Studies. *Agenda*, 29(1)

(refugee, exile, migrant, stateless) remove them from immediate visibility”.¹³⁶ Macharia suggests that the names and faces, bodies, and stories which might populate these archives “form an archive of disposability, an archive that is not admitted into official view, an archive whose presence undoes much of what we might mean by archive”.¹³⁷

Yet, to look for this echo is a far-from-neutral undertaking, in that transgender, much like queer, becomes legitimated through the archival evidence of the phenomena it seeks out in the first place. In essence, transgender phenomena run the risk of becoming “a rhetorical institution ... intentionally adapted to an audience for a particular persuasive purpose”.¹³⁸ This danger here is two-fold: firstly, this purpose is often to prove or establish the validity of the archive in the first place; secondly, linked to this, drawing on the archive often requires a re-contextualisation of already-established materials. This is evident in my reading of *S v Kola*.¹³⁹ This reading requires the researcher to reinterpret what may have been excluded or included, reinstating a cycle of exclusion or inclusion by bringing to the fore artefacts considered more salient to a transgender reading. For Rawson, “this cycle of inclusion and exclusion, of representation and misrepresentation, is the permanent shadow of any trans archival project, even digital ones; while transgender archives fight historical neglect, silences, and misrepresentations, the selection and discrimination involved in archiving creates a residual silencing of others.”¹⁴⁰ Transgender Studies has attempted to address these concerns by pressing for the methodological centring of the lives of transgender people – their embodied existence – as a vital and necessary corrective: the boundary that must define the interpretation of transgender phenomena.¹⁴¹

Methodology: A Return to the Borderlands

Aren Aizura warns that those working within Transgender Studies need to be critical of this embodied subject, of transgender’s “implicit whiteness, US-centricity, Anglophone bias, and sometimes the suspect ways in which the category ... has been circulated transnationally”.¹⁴² In an attempt to address what I have experienced as a methodological hurdle I have turned to decolonial practice, in some ways, as noted, already implicit within Transgender Studies as a means to shift from the embodied subject to the knowing subject.

¹³⁶ Macharia, K. (2015). Archive and Method in Queer African Studies. *Agenda*, 29(1), p. 142.

¹³⁷ Ibid., p. 40.

¹³⁸ Rawson, K. J. (2014). Archive. *TSQ Transgender Studies Quarterly*, 1(1-2), p. 25.

¹³⁹ *S v Kola* 1966 (4) SA 322 (A) 1966 (4) SA.

¹⁴⁰ Rawson, K. J. (2014). Archive. *TSQ Transgender Studies Quarterly*, 1(1-2), p. 25.

¹⁴¹ Stryker, S. (2006). (De)Subjugated Knowledges: An Introduction to Transgender Studies. In S. Stryker & S. Whittle (Eds.), *The Transgender Studies Reader*. New York: Routledge, p. 12.

¹⁴² Stryker, S., & Aizura, A. Z. (2013). *The Transgender Studies Reader 2*. New York: Routledge, p. 4.

The benefit of this approach to my methodology has been two-fold: for decolonial practice the “knowing subject is never abstract”¹⁴³, not only is it not abstract, but the knowledge of this subject is understood as “geographically *and* corpo-politically constituted”.¹⁴⁴ Along with this, border epistemology, a crucial tenet of decolonial practice, has enabled thinking through and over the intersecting liminal positions characterised, for example, “by gender, sexuality ... by the geo-politics and body-politics of knowledge, of being, and of perception”.¹⁴⁵ Border epistemology is central in that it requires a consideration of the imbricated nature of the western disciplinary framework, while holding the possibility, I believe, of disrupting the western universality and linearity that have felt either constricting or exclusionary to my own thoughts and positioning, and that of the participants in this research.

For Mignolo, reflecting perhaps some of Macharia’s anxiety, it is crucial to understand the world as “entangled through and by the colonial matrix of power”.¹⁴⁶ He sees border epistemology as “a way of thinking and understanding that dwells in the entanglement, in the borders”¹⁴⁷. This, I believe, has allowed for a prying open of the space, to consider the ways in which participants might structure their understanding or use of transgender outside of the geopolitical imaginings Aizura warns of. These narratives of embodiment – those of the knowing subject – can come to be understood as “striated and cross hatched by the boundaries of significant forms of difference other than gender, within all of which gender is necessarily implicated”.¹⁴⁸ Following from this, the entanglements become opportunities to restructure and decentre certain perceptions of the ‘trans trajectory’. This allows transgender phenomena to come to the fore, directly related to the geopolitically knowing subject embedded within the travel of language, colonial histories, and various matrices of power. To return to an earlier point, this allows for the possibility of terms to resist their English linguistic dominance: to be opened up as the geo and body politics of spaces of hybridity come into contact with them.¹⁴⁹

¹⁴³ Mignolo, W. (2013). On Comparison: Who is Comparing what and why? In R. Felski & S. S. Friedman (Eds.), *Comparison: Theory, Approaches, Uses*. Baltimore: John Hopkins University Press, p. 113.

¹⁴⁴ Ibid., p. 114.

¹⁴⁵ Tlostanova, M. (2014). *Decoloniality and Border Thinking: Perspectives on a Pluricentric World*. Presented at Thinking Together. Germany.

¹⁴⁶ Mignolo, W. D. (2013, October 23). *On Pluriversality*. Retrieved May 15, 2015, from <http://waltermignolo.com/on-pluriversality/>

¹⁴⁷ Ibid.

¹⁴⁸ Stryker, S., Currah, P., & Moore, L. J. (2008). Introduction: Trans-, Trans, or Transgender? *Women's Studies Quarterly*, 36(3 & 4 Fall/Winter), p. 12.

¹⁴⁹ Mignolo, W. (2013). On Comparison: Who is Comparing what and why? In R. Felski & S. S. Friedman (Eds.), *Comparison: Theory, Approaches, Uses*. Baltimore: John Hopkins University Press, p. 114.

Importantly, this kind of methodological approach stresses the positionality of the researcher. Mignolo notes that from Anzaldúa he has learnt that migrants and queers, “are always dwelling in the border”.¹⁵⁰ This is particularly pertinent for a project such as this where several kinds of borders are being inhabited, shifted, stretched and melded in any given moment of interaction. Border thinking requires acknowledging my own border dwelling, acknowledging the ways in which I am an ‘I’ in the project. It creates an expectancy around my own voice. I am not a distant observer but imbricated in knowledge production: my position structures spaces, interactions, and thinking – both my own and that of participants. In order to centre the specific narratives of participants as ‘knowing subjects’ I undertook a set of life story interviews. I believe that this method of interviewing places emphasis on the subjective perspective of participants, crucial to my being able to understand the travelling of transgender in relation to participants and their travel in relation to transgender. Considering my commitment to borderland epistemology, life story interviews offered the necessary interdisciplinary approach, making room for the emergence of “patterns, perceptions, and processes that contribute to our understanding of lives across time.”¹⁵¹ Life stories focus on an individual’s own sense of place in the “social order of things and can explain or confirm experience through the moral, ethical, or social context of a given situation”.¹⁵²

Kenneth Plummer suggests that a key element of this type of methodological approach is its ability to centre the identity stories of “members of historically ‘defiled’ groups ... reveal[ing] ... shifts in language over time, which shaped (and were shaped by) the mobilization of these actors”. This speaks both to Transgender Studies and my own concerns with decolonisation. Issues, which can be understood as ‘personal troubles’, are situated in specific times and places. To return to Mignolo, this provides the possibility of stories that are “geographically *and* corpo-politically constituted”.¹⁵³ In turn, an individual’s narratives about these troubles “are works of history as much as they are about individuals, the social spaces they inhabit, and the societies they live in”¹⁵⁴. Narrators provide some sense of social situations and history: they help to ascertain specific truths and link those truths to present-day action or inaction. With regards to truth, it must be understood that

¹⁵⁰ Mignolo, W. D. (2013, October 23). *On Pluriversality*. Retrieved May 15, 2015, from <http://waltermignolo.com/on-pluriversality/>

¹⁵¹ Atkinson, R. (2002). The Life Story Interview. In J. F. Gubrium & J. A. Holstein (Eds.), *Handbook of Interview Research: Context and Method*. London: Sage Publications, p.133.

¹⁵² Ibid., p. 129.

¹⁵³ Mignolo, W. (2013). On Comparison: Who is Comparing what and why? In R. Felski & S. S. Friedman (Eds.), *Comparison: Theory, Approaches, Uses*. Baltimore: John Hopkins University Press, p. 114.

¹⁵⁴ Riessman, C. (2001). Analysis of Personal Narratives. In J. F. Gubrium & J. A. Holstein (Eds.) *Handbook of Interview Research: Context & Method*. London: Sage Publications, p. 697.

each story has a point of view depending on where, to whom, about what, why and when it is being told. In turn, the importance of narrative is not about uncovering *the* truth, but rather the meaning of particular phenomena and the relationships between phenomena.

‘The Knowing Subject’

During the course of my fieldwork, I conducted fourteen life story interviews with transgender-identified asylum seekers and would-be asylum seekers living in South Africa, originally from other African countries. There were six other participants whom I did not interview directly, for several reasons, including: their passing, or a concern for their mental health and well-being. For instance, in the case of Victor Mukasa and Tiwonge Chimbalanga I was particularly concerned over wellbeing. Both have garnered an extensive media archive and these have been most useful in understanding moments of their journey to South Africa. I was particularly wary of interviewing for interviewing’s sake. In the case of Tiwonge in particular, I felt that although we have met several times, it was not necessary for me to become yet another of the growing list of researchers/journalists/civil society representatives/documentary makers inviting her to retell a life story easily available elsewhere. Finally, two of the participants are no longer living in South Africa, although I had been, and continue to be, in contact with them. I was able access archival interviews about their journey to South Africa and ask them any follow-up questions through both Facebook and email. Alongside these, I carried out nineteen organisational interviews with representatives from civil society groups: transgender organisations, refugee organisations, religious groupings, a medical practitioner, lawyers, and shelter providers. I was also able to draw on some of the digital work created by these organisations that either focused on or mentioned transgender asylum seekers historically. I also submitted a Promotion of Access to Information (PAIA) request to the Department of Home Affairs regarding numbers of people applying for asylum on the grounds of gender and/or sexual orientation, and numbers of refugee statuses awarded. The Department response was that they “do not classify applications for asylum according to reasons for application”.¹⁵⁵

All participants were black African asylum seekers or would-be asylum seekers. Since my use of asylum spread to those that could potentially apply for asylum but for various reasons had chosen not to, I had one interview with a white person born in an African country and living in South Africa. Although this interview was fruitful, this person had been able to gain South African citizenship through parental lineage and so this ruled them out. Participants were selected based on their own self-identification, in particular their use of the term transgender. I was wary at all times of David Valentine’s warning that including

¹⁵⁵ McKay, J. W. (2013, May 23). Request for Access to Information Statistics For Asylum Applications Based on Persecution as Member of a Social Group and Sexual Orientation. *Deputy Director General Immigration Services*.

people who perform gender as perceptible incongruence but do not identify as transgender “produces a representational colonisation of those lives”¹⁵⁶. In turn, transgender did not have to be participant’s primary identity but had to form some element of their identity and be a key reason for their coming to South Africa. Some participants were acquaintances of mine prior to beginning research; others were put into contact with me through organisations. I must state here that this ability to make contact through organisations was largely based my own historical relationship with several organisations, which allowed for a level of trust on the part of these organisations in introducing me to some of their constituents. Only in one case was I introduced to a participant’s personal network of transgender-identified friends, after meeting the participant through an organisation.

Participants ranged in age from their early twenties to late forties, all having come to South Africa after 2000. Apart from one participant, all had decided prior to coming to South Africa that this was where they wanted to be, because of the belief that they would find, here (/there), a certain freedom in their gender and/or sexual identity. Very few participants were able to afford direct means of travel such as an aeroplane ticket to South Africa. Their income, class and employment status varied quite significantly prior to leaving their countries of origin: some came from fairly wealthy families, some from well-respected religious families and others from families where at least one parent was a government employee. Participants came from a range of employment backgrounds, namely: hairdressers, hotel staff, bank tellers, shop assistants and a librarian. Four were university students and three out of those four were able to continue their education in South Africa. Participants came from East, Central, Southern and the Horn of Africa, with the majority coming from East and Southern Africa. Many travelled through other countries to reach South Africa, including Tanzania, Zimbabwe, Kenya and Mozambique. Several participants experienced various difficulties at different borders regarding their appearance in relation to their documentation – if they crossed into countries through means considered legal. Some participants also attempted to settle in other countries including Kenya, Zanzibar, Saudi Arabia, Yemen and Malawi prior to coming to South Africa.

The majority of the participants were unemployed in South Africa, barring the students and a few participants who were self-employed as sex workers.¹⁵⁷ To survive, those who were unemployed relied on support from a combination of civil society organisations: in return, in some cases, they volunteered their time. Participants engaged in this volunteer work on an unpaid basis because organisational spaces provide access to the Internet,

¹⁵⁶ Valentine, D. (2007). *Imagining Transgender: An Ethnography of a Category*. London: Duke University Press, p. 45.

¹⁵⁷ A number of the transgender-identified women felt that sex work had become their only means of survival but they also framed this as a chance to be self-employed and in control of their income.

shelter during the day, and electricity. One participant received regular funding from a transnational organisation although it was made clear that this would not be an on-going arrangement. Others relied on transnational contacts that they had cultivated mainly through the Internet. These contacts provided them with a monthly allowance or irregular donations. Sometimes supportive family members in countries of origin also sent money. Only two participants had self-sustaining full-time employment.

I used an iPhone to record all of my interviews. I believe that this overcame a number of the limits I would have experienced had I been using a recording device in some of the spaces in which participants undertook to have their interviews. The phone allowed for a certain sense of ease as compared with a recording device, given the ubiquitous nature of mobile phones today: as soon as it was turned on I found that we both generally forgot about its presence and were able to talk without the strictures of an interview scenario. The phone also allowed me to record interviews in spaces that would have proved difficult with a recording device¹⁵⁸ – in hospitals when I accompanied Ava to get her hormones, while getting my hair cut with Kelly, or in the car driving Stella to work. Conversations in public spaces with the use of the phone were far more relaxed and had a certain level of intimacy. I did not want to force participants into spaces in which they might not feel comfortable, so when asked where we should host a meeting, if it was left to me, I would always choose the office of an NGO. These were my most rigid interviews, as I found these the hardest spaces in which to connect with participants. I imagine that this was partly because I, as the white researcher, seemingly became part of the NGO in those moments.

Some participants I saw only once: those I did not see again made it clear from the outset that this would be the case. There would be no follow-up interview; they were willing to make themselves visible to me in a singular moment and they were very much in control of this visibility. This was particularly the case with Tom, who, more than any other participant, was clear that he had made the decision to be interviewed as a transgender person, and that I would never have known that he was trans had he not said so. Tom placed a great deal of trust in me and in this project, believing that his life story might somehow be able to assist others like him. Tom's response also speaks to the higher number, amongst participants, of transgender women or feminine-presenting people. This, I believe, is largely due to the relative ease with which those who are assigned female at birth, but identify and present as men, are able to live in stealth. It is notable that all the transgender men in this study were employed, experienced comparatively less physical harassment and abuse, were far more positive in their outlook, and were self-supporting.

¹⁵⁸ In part because a recording device would have drawn unwanted attention to our relationship and intention within certain spaces.

Others, due to lack of mobility and the precarious nature of our combined visibility in public spaces, were unlikely to see me again outside of an organisational setting. This was particularly the case in Johannesburg and Tshwane. Cape Town was different in that some participants and I often frequented the same spaces, particularly in relation to civil society organisations and LGBT-focused events. There was a fairly substantial group with whom I was able to carry out follow-up interviews. Three participants in particular allowed me to join them in their day-to-day spaces including church, waiting for hormone prescriptions at Groote Schuur Hospital, visits to Home Affairs, their places of work, and for one participant, in their home. In each locale, several participants already knew each other through support groups, civil society organisations and religious groups catering to either transgender people or asylum seekers.

Even in the Field you still need a Haircut

In an effort to address some of what I mean by border thinking and my own relationality to participants and this work, I am going to 'shift' from talking about purely academic issues at this juncture and focus on an interaction with one participant. I will use the following narrative to illustrate some of the finer points of my methodological approach and as a means to provide insight into fieldwork itself, participants, and greater ethical concerns. Importantly, I hope to use this narrative to do the very thing I have argued is necessary in relation to Transgender Studies as it currently stands – bring my own corpo-political stakes into visibility, decentre myself – the white, English speaking, educated, genderqueer South African, from a working class/aspirationally middle class family background, who also happens to have several documents that enable an ease of travel – however uncomfortable, and make clear my own meaning-making role.

I am sitting in a hair salon on Long Street, one of the central arteries of the small yet bustling Cape Town CBD. The salon, like many of its kind, caters to passers-by in need of a relatively inexpensive haircut, depending on who you are or who you are perceived to be. One of their main aims, as Kelly – a participant – who works at the salon tells me, is to net tourists: white Europeans and Americans who are looking to attain that 'authentic' African look from their holiday in South Africa (read: braids). The salon is nestled between a parking garage and an African curio shop, towards the lower end of Long Street which features far more businesses run by African foreign nationals – spaza shops, Ethiopian restaurants and the well-known African Women's Market – in contrast to the white-dominated hipster cocktail bars and burger joints of the upper end.

If you were to walk past the salon you would probably not look twice. The front window is covered in magazine cutouts of black celebrities sporting a selection of hairstyles which,

ostensibly, can be recreated within. Between these hang various types and qualities of hair which can be purchased for use in these grand creations. Between a circa 1990s image of Usher and a what looks like an early millennium Chris Brown, one can just glimpse the shop's interior. The owner sits at an L-shaped counter with her back to the street looking inwards on the eight chairs available, four to either side of the room. Whenever I visit, she is usually either chatting or staring at one of two massive flat-screen televisions which dominate the far end of the salon, straddled by wall-to-wall mirrors. One of these is always showing either *MTV Base* or *Channel O* while the other, if not on the same channel, is blasting out the evangelical voice of some distant pastor. On my last visit, the preaching screen was repeatedly bleating out the message of an upcoming gathering hosted by '*Liberation City: Mountain of Liberation and Miracle Ministries*'

"The deaf shall hear and the dumb shall speak. Every incurable disease shall be healed ... Acts of the prophet of this age ... Your barrenness shall be broken. Jesus will definitely touch you. This is the time of miracles. Come and be blessed"

Those read as men congregate on the right – the first four chairs to meet your glance as you enter the salon. The women's section is to your left. Regardless of the implicit space demarcation, it is clearly the men who very much own the general space. They can usually be found congregating around the door whenever I visit, calling out to passers-by – particularly young women. I do not find them altogether imposing, but then I am white clientele, and for the first few times, at least, they probably assume I am either a man or a foreigner, or both. The first time I enter, at least three of them try to hustle me into one of their barber chairs. I say in my best researcher's voice "I am here for Kelly". There is a collective double take – something is suddenly not quite right – but I am a white and ostensibly paying client and that, in this space, trumps everything else.

Kelly, a transgender-identified asylum seeker from East Africa, works on the women's side of the shop. This is despite the criticism and anger of those on the men's side of the shop. She tells me in hushed tones, underneath the sound of hairdryers to either side of me, that they don't really like her very much and often call her 'Moffie'. Notwithstanding this prejudice, one of them has tried to persuade her to go on a date with him after hours, but he would never admit this in front of his friends. If you were to walk down Long Street, you would know Kelly instantly from her shoulder length braids, her large white sunglasses of classic 70s style, and her favourite item of clothing: figure-hugging skinny jeans. We bond over this, our love for suffocatingly tight trousers, although the bright colours of hers always heighten the statement of her sunglasses and accentuate her hips (or so she tells me), while mine are always and only ever black. Today, like most days, I am wearing all black, subduing any visible curves.

If my gender presentation is largely masculine, then Kelly is my polar opposite. Our combined visual effect, in terms of gender-presentation, was the ultimate incongruity. This made meeting anywhere an uncomfortable and potentially hazardous experience for both of us, but particularly for Kelly, given the precarious nature of so much of her life in South Africa: animated by her gender, striated by her race, nationality, and the precarious nature of her asylum papers. Our first official interview took place on a Thursday afternoon on a park bench in the middle of *The Company's Garden*, at her request. A strangely liminal space – if ever there was one – for us to meet. *The Garden*, named by the Dutch East India Company (VOC) and the first group of European colonisers to settle in the Cape in 1652, is wedged somewhere between past and present in the middle of Cape Town, with Queen Victoria Street to one side and the South African Parliament to the other. Mid conversation, a child marches past us, greeting Kelly in transit. In response to my quizzical look, she explains that “people like her”, who have been homeless and slept in places like this, all know each other. This is when I decide to start coming to Kelly to have my hair done.

In the salon, Kelly opens her cupboard to the right of me and brings out a set of clippers clearly being held together with a wish and some duct tape. At first they don't work; eventually she gets them going but they cut out periodically. I entertain the minor concern that having my head electrocuted might be far more dangerous than the glaring faces visible in my mirror from other side of the room. I concentrate on Chris Brown and wonder about Jesus definitely touching anyone. The men watch; they watch the entire process, and they have watched every time since without fail. Had it been any other item of hair care, Kelly would probably have simply asked one of the other women around her if she could borrow theirs, but clippers, it seems, are gendered and belong on the side of the shop we do not occupy. Having raised the ire and interest of one side I grit my teeth, ignore the smell of burning plastic and hope that the next five minutes of my life don't kill me or end Kelly's job. When we are done, the woman to the right of me is applying lipstick; she asks her friend how it looks. When her friend is slow to answer, I – in relief at my new-found lease on life – blurt, a little too triumphantly, “it looks great – that colour really works for you”. With mild shock on her face she turns back to her friend and says “intombazana?” (a girl?) her friend replies “hai angazi” (Hai I don't know). I turn to them and say “question mark” and we all laugh.

Field and Home: The Police Don't Make Distinctions

My field was dictated by participants: although I looked for transgender asylum seekers in all major urban areas in South Africa, I found most to be situated in Cape Town and Johannesburg, with one participant in Tshwane. As is evident from the businesses in and around Kelly's place of work, these semi urban CBD spaces make sense for economic, cultural and social reasons. A variety of sexualities and gender expressions from all walks of

life are generally far more visible in these urban settings along with economic migrants and asylum seekers. I was not surprised, then, that these turned out to be my field sites. I spent between 6 and 8 months in Johannesburg and Tshwane, and the rest of my time in Cape Town. In Cape Town, the majority of participants (including Kelly) lived, at one time or another, in Sea Point – my own neighbourhood. The field in some senses was always part of home and I have run into participants whilst doing my shopping, out walking, or cycling to work. Kelly's hair salon was a daily feature on my commute. In Johannesburg, most of participants lived in Hillbrow – a suburb on the outskirts of the CBD – in shared apartments. Another was renting a shared room in the yard of her employer's house and yet another lived on a premises shared with five other students. At the time of interviewing, none of the participants had children and none were married, although several expressed a desire to marry. In most cases, this was about the desire to have a family, or to regularise relationships with potentially wayward boyfriends. Almost always, though, this was also about an alternate means for participants to regularise their stay in South Africa, thereby exiting the asylum system.

Considering that notions of home are both epistemological and ontological threads that run throughout this work, the distinction between the field and home became an interesting one within this body of work. This thesis has been a complex negotiation of self in relation to participants, always aware of my own presence and the "question mark" that brings greater visibility to the space which a participant and I share. This has meant that, for the most part, my fieldwork interviews have taken place in contexts that I consider unconventional: public park benches, McDonald's car parks. Places which felt, at times, extremely public but also extremely isolated, and which constantly brought me back to notions of borders. I was never able to fully dislodge myself from the field: in many ways, parts of it are also very visceral elements of my own world, given that I navigate some of the same gendered environments that participants have had to, although I have far more means at my disposal to make that navigation slightly more comfortable and less fraught. I was never quite an insider, but rather someone that hovered around similar margins and had passed others on similar passages. Let me state for clarity though, that our lives are in no way commensurate: I am white, have passports, easier access to education, and financial support garnered from doing this PhD. This, however, does not make me immune to the same systems of regulation that impact participants' lives. The gendered division of the hair salon and my own unease in navigating it are but a microcosm of the pervasive system of gendered governance across society.

Two incidents in particular, which occurred during the period of my research, illustrate this pervasive system of gendered governance. The first incident occurred after a return flight from Johannesburg to Cape Town. I, along with another passenger, experienced profiling that was very much to do with our respective expressions of gender. I have rarely heard of a

stop and search taking place on domestic flights, but after retrieving my bag from the luggage carousel, I was approached by members of the South African Police Service and told to follow them. About five minutes after I entered a small room to the side of the airport exit hall, a tall, very effeminate-looking man followed me into the room with his bags. He waltzed into the room, took one look at me, turned to the police and said: “I see what you’re doing here. We will see who you think is a moffie”.

The second incident took place in Johannesburg, when my partner, who identifies as a cisgendered woman, and I were stopped one night on our way home. Her driver’s licence was confiscated by a police officer, and we were ordered to follow the police vehicle to the Hillbrow police station. The arresting officer threatened to lock my partner in a cell for the night, despite the fact that we had not been officially arrested, and had no official charges laid against us. We offered to be breathalised if alcohol consumption was their concern. When I refused to accept the possibility of her staying overnight, the officer in charge turned to me and asked for my ID. After inspecting it, he glibly asked me if I knew how he knew I wasn’t a man. He then picked up my ID and pointed to the central numbers: “this here on your ID, these numbers tell me you are a girl”. After having his fun, he eventually walked us back to our vehicle with his arm around my clearly frightened partner, looking over his shoulder to see what my reaction might be.

In both of the cases described above, had I been black, foreign and carrying asylum papers, I am certain the outcome would have been distinctly worse.

“But what are you?”

I have been dialogically produced within and through research spaces, as illustrated by the interactions with the various aspects of Kelly’s workspace, and in relation to Kelly. I bring her gender presentation into stark relief, as she does mine. I have always felt far more affinity with transgender and gender non-conforming spaces than gay or lesbian spaces. I feel that my commonalities were only further reinstated and supported by my interactions with participants. I admit that for me these were never easy. Every question I asked was asked, in some way, in return. My knowledge about hormones, organisations, support groups, lawyers, waiting lists, safe spaces, bars, nightclubs and events became their knowledge. My knowledge about myself was also their knowledge about me and this was something I was not expecting. It was abundantly clear that who and what I was mattered to participants, that I could vocalise it in a way that they could understand and look for the parallels, where we might cross and find each other. In some cases, I felt the interview was running away with me and that I was no longer the interviewer but rather the interviewee. This shifting of roles, a criss-crossing and muddling of our internal borders between researcher and participant was another version of the possibility of mobility opened up by

‘trans’. Tey Meadow notes, reflecting on a similar experience, that “every body (and everybody) has gender, and so gender always frames both the perceptions of the researcher and research endeavour by those who are studied and the knowledge produced by person-to-person encounters”.¹⁵⁹

The requirement, implicitly asked of me by participants, that I offer them the same level of disclosure that they had offered me, meant that I too had to provide biographical information. I too had to unearth and give language to what it is that I felt about how I move in the world, and what it is that I want people to see. My gender, my genderqueerness, was, regardless of my own interview fatigue, most often a resource for trust – one which I mobilised as needed to convey that I understood aspects of life that others might not. I have no doubt that it gave me access that others in similar situations might have been precluded from, but it also brought its own set of challenges. Meadow warns, “as we labour to place ourselves some distance from those we analyse, they are also labouring, watching us, making meaning of us”.¹⁶⁰ During interviews, and sharing spaces like the salon, I was always struck by what our bodies could and could not say to each other, and what they said in combination. I was never allowed to become disembodied, forget my own gender presentations, my perceived sexuality, my access, and my whiteness. These all remained present all the time, because these were the things that I was questioned about. Exhaustingly so. As much as I learned in those spaces between us, participants wanted to learn too. In almost every interview at some point I was asked “but what are you?”

Sometimes I was treated as a transgender man, one of the boys, taken into confidence because I am masculine-presenting. For instance, one informant messaged me after our first meeting letting me know he had some spare testosterone that he was no longer using and was looking to “move” if I knew anyone that might be interested. Sometimes, as in Kelly’s place of business, my identity could shift within minutes depending on how I was situated. I could go from being read as a man in need of a haircut, to an uncertainty, to someone like Kelly and therefore looked on with a hint of malice. On two occasions I was read less as “question mark” and more as definitely male, as a participant’s boyfriend or male partner. This reading of my embodiment in relation to theirs was an ever-present concern for me. In the enclosed confines of the shop I believe business trumped potential prejudice, but what of Kelly when I wasn’t there? Had I made her perceived incongruence that much more visible? The first time I met Ava, it was clear that she had not been expecting me to look or present as I did. We had agreed to an interview in her apartment which was situated within a gated complex. It was clear once I met her out front that my presence, and the attention we were drawing from several men loitering inside the gate, was causing her great agitation.

¹⁵⁹ Meadow, T. (2013). Studying Each Other: On Agency, Constraint, and Positionality in the Field. *Journal of Contemporary Ethnography*, 42(4), p. 8.

¹⁶⁰ Ibid., p. 2-3.

These men, she later told me, were Nigerians who had threatened her life recently. Reading her anxiety, and having limited options available, I suggested we go to my rental car instead. Returning to the car I asked her if next time she would perhaps like to meet somewhere else. Her response was unequivocal: “No, the car is probably going to be best”. Another kind of borderland, to be sure.

Language was an issue in some cases. Although I did undertake Swahili lessons at the beginning of this project, it became financially unfeasible. All participants spoke English, but I am all too aware that some of their experiences lost something in participants’ efforts to translate them into English so that I could understand them. This was storytelling, in some ways, on my terms. It was in these moments, as I thought about whether I was repeating the job of the Refugee Reception Officer, that perhaps I came closest to understanding what it must be like to have to explain one’s body, identity, and sense of self in a concise narrative, vesting me with power. At times, much like the salon, participants did not believe I was South African, noting that white South Africans were not interested in their concerns. I often had to make clear that I was not a foreigner, suggesting the wider visibility and involvement of foreign researchers in South Africa. On one occasion, a contact at an NGO, even explained what the word ‘moffie’ meant to me – a word that a typical South African would understand but a foreigner might not. At times I think this worked to my advantage – the assumption that I was not South African meant I was not part of their current situation, like them; I was merely trying to understand their current situation.

The levels of trust varied: for some participants it was clear that apart from their support group, very few spaces had opened up for them to discuss gender and corporeal desires. I struggled for a long time in the beginning with the weight of their stories, feeling that I was somehow profiting from their, at times, very difficult lives – I assume many researchers experience this. I like to believe that what I offered was a space to speak and to listen, a person to acknowledge their identity and use the correct and desired pronoun. I felt most often, as with Tom, that I was being asked to witness something. Perhaps that I too needed to be a node, a body, in the wider circulation of transgender. This was probably driven home to me most acutely during a fieldwork trip to Johannesburg, when a participant in Cape Town called me late one evening. She lived in a shared flat in the Cape Town CBD with three male foreign nationals. Her roommate, a gay man, had recently moved out due to threats from the men. She told me that they treated her as though she was diseased. On the night of her call she was crying and in the background there was frantic pounding against her bedroom door. She had passed a comment about their behaviour towards her, and now they were threatening to kill her. And she had barricaded herself in her room. When I asked if we should call the police, she said this would only make matters worse because although the police could put a stop to the noise, they couldn’t stay in the house

forever. I sat with her on the phone for a long time. What stuck with me most about our conversation is the reason she called me, a reason she repeated several times – she wanted me to be a witness. She said if they killed her that night then I needed to know, I needed to witness her death because perhaps nobody else would.

Paperwork: Naming and Pronouns

I recognised prior to beginning fieldwork the interactions many participants had on a daily basis around naming, official documentation and bureaucracies of power. I was wary of re-enacting systems of oppression by presenting more paper that was signed and seemingly never seen again. I was inspired largely by the work of Eithne Luibheid in this regard. In the introduction to her book on controlling sexuality at national borders, she asks what it might mean for researchers to be enmeshed in systems of bureaucratic control that hinge on proper naming and documentation.¹⁶¹ Luibheid asks how scholars might perpetuate the very systems they write about. Consent was thus always verbal along with a discussion over preferred name and pronoun. I believed that this was the best method possible when I began this thesis, and hold to this after completing fieldwork. I was constantly aware of the consent given because I did not have a slip of paper that had been signed and filed somewhere. What I would do with data came up during some of my conversations and in fact for one or two participants, transgender men in particular, the lack of consent form was appealing to them because it meant I had nothing but words and their voices.

Following this, the problem turned to pseudonyms and perhaps this is where I erred. I began to wonder about naming and not naming, asking a person to take on yet another name by which to be known, and how I might be inviting another psychological oppression. The word they had chosen for themselves that, regardless of its official recognition or its non-appearance on any document, the taken-for-grantedness that naming has in official spaces allowing access to the basics of everyday life – this name, regardless, was theirs. I was now, in asking for a pseudonym, asking them to put this aside and produce yet another. For most transgender people, their chosen name is a process and something fiercely important and symbolic. In asking for a name, a new name, to rename yet again, I felt that I was shifting the space from one of safety and understanding to something quite clinical and disempowering. This was evident in their responses to my request for a pseudonym. In light of this, unless a name was offered readily, I offered to provide pseudonyms.

Some suggested I just use their name anyway since they had spoken openly in newspapers or in documentaries about their lives and who they were. I recognised this but

¹⁶¹ Luibheid, E. (2002). *Entry Denied: Controlling Sexuality at the Border*. Minneapolis: University of Minnesota Press, p. XXIV.

unless I used the documentary footage I still chose to pursue pseudonym usage, largely because the more we talked, the more it became clear that some of the tactics of survival that each individual utilised could in some or other way be construed or framed as illegal by the State. Given the small numbers and propensity for high visibility of transgender people, I did not want to risk participants' lives or their possible future relations with state entities, which in many ways already seemed all-powerful. Naming has been an on-going struggle. At first I believed it best only to provide letters as names but after a first reading of a draft chapter, it became abundantly clear that this had done exactly what I had hoped not to do to participants – dehumanised them. In some way I enacted a kind of violence here that I have not yet quite been able to forgive myself for. I did the exact opposite of what I had intended, and seemingly turned people into data. I continue to struggle with the idea that a project that aims to affirm and highlight the complexities of trans people's lives – so often subsumed, overlooked or erased – should at the same time have to conceal identities, albeit for necessary ethical reasons.

I chose pseudonyms that reflected the character and resilience of each participant. These were not random choices; I was acutely aware of my 'white tongue' and the further layer of ethical quandary embedded in my bestowing of names. To this end, I searched for names similar to their chosen names in meaning or that maintained an equivalent sentiment but were also indigenous to their countries of origin. I did not want to lose the gravity of their individuality. Naming was not the only ethical factor of concern. Given the numbers and visibility of transgender asylum seekers, it was crucial to disguise other identifying data. For instance, I often refer to 'country of origin': this is in no way an attempt to be obscure but a recognition that naming their country, for some participants, would be akin to providing their name. This project is about the experience of transgender-identified asylum seekers themselves and so, although the countries that participants have come from are important in terms of notions of home and cultural and social formations, I believe that the substance and validity of this work hold true without the exact names of the exact countries.

Thinking from the Border

Whittle warns against recapitulating the powers of colonialism by simply assimilating non-Western configurations of gender without attempting to understand them.¹⁶² He suggests, "Transgender is without a doubt, a category of first world origin that is being exported for third world consumption".¹⁶³ Yet, Tucker notes, in *Queer Visibilities*, "It remains difficult and

¹⁶² Whittle, S. (2006). Foreword. In S. Stryker & S. Whittle (Eds.), *The Transgender Studies Reader*. New York: Routledge.

¹⁶³ Ibid., p. 14.

dubious to analytically prise apart ‘western identities’ and identities found in Africa”.¹⁶⁴ Adrienne Rich has long called for ‘politics of location’.¹⁶⁵ She argues that it is detrimental to have grandiose theory without specificity and acknowledgement of the body and indeed, as Anzaldúa would agree, the lived experience of the person who inhabits that body and in turn that life.

This work then, I believe, emerges in this moment, anchored in the methodologies traditionally associated with Transgender Studies but with a focus on geopolitical location that may work to shape different gender subjectivities. In combining a genealogical approach with the voices of participants, I take to heart Stryker’s argument that neither holds more power but rather that they work in relation to one another. Studied from a position of exteriority, transgender phenomena, and their relation to asylum, assist in establishing the “particularities and specificities” of the speaking position of transgender-identified refugees and asylum seekers.¹⁶⁶ In this chapter, I have given a broad overview of my approaches and experiences in the field, and the nuanced ethical and methodological hurdles. Moreover, this chapter has drawn on some of the main theoretical strains that animate both this work and my thinking as a means of structuring some of the methodological approaches regarding participants, the data and my own role and choices.

What I have done in this methodology, drawing inspiration from Anzaldúa, is not only to explain my position but also attempt to illustrate it creatively. Finding a means to talk about what non-conforming bodies can mean in conversation with one another, while noting the ways that race, economic situatedness, class, education and nationality intersect, are significant factors, but amongst these, gender is also always present. I have tried to bring myself into visibility, an uncomfortable and at times exhausting experience, but no different from what I myself asked for within interview situations. I have done this while mapping the space – another kind of borderland – that cross-sects within this work, while drawing on the decolonial practice of thinking from the border, as a tool to address the circulation of a particular racialised narrative of transgender and trans mobility – a certain idea of who the embodied subject might be. In order to overcome the narrative domination of these particular understandings of transgender and trans mobility I have suggested that perhaps a shift to the geopolitically located ‘knowing subject’ might provide the kind of tools attuned to the echo of this distinct and situated archive.

¹⁶⁴ Tucker, A. (2009). *Queer visibilities: space, identity and interaction in Cape Town*. Chichester: Wiley-Blackwell, p. 4.

¹⁶⁵ Rich, A. (1986). *Blood, Bread And Poetry*. London: Virago Press, p. 215.

¹⁶⁶ Stryker, S. (2006). (De)Subjugated Knowledges: An Introduction to Transgender Studies. In S. Stryker & S. Whittle (Eds.), *The Transgender Studies Reader*. New York: Routledge, p. 12.

Chapter One: The Emergence of a Discourse of Transgender

At an international and national level for South Africa, the legal framework which would enable the acknowledgement and assistance of individuals fleeing their countries due to persecution based on gender identity and/or sexual orientation has existed since the late 1990s. It is theoretically far-reaching and covers a variety of possible understandings of both gender and sexual experience, and provides the possibility of unsettling the currently-prevailing, largely Western, categories. For the most part, however, the current political landscape relating to gender identity and expression has been animated by the term 'transgender'. In an historical sense, 'transgender' as a term is a relatively recent concept. Nonetheless it describes or encapsulates ways of being and identifying – variance, non-conformity or transgressiveness – that have existed for far longer than it has. As a means of understanding the emergence of transgender, this chapter begins to unpack the conceptual travel of ideas regarding the body its perceived truths, stabilities, instabilities, and the historical nuances particular to South Africa. Susan Stryker, in her seminal work *Transgender History* (2008), has utilised what she has labelled “transgender phenomena” to track similar nuances – the existence of gender variant or transgressive occurrences – through US history.¹⁶⁷ Stryker defines transgender phenomena as

anything that disrupts or denaturalises the normative linkages we assume to exist between biological sex, sex role socialisation subjectively experienced or self-perceived gender/ identity, expression of stereotypical gender behaviour and appearance, kinship status, reproductive function or capacity ... Whatever we see that brings the unnaturalness of this assemblage into visibility.¹⁶⁸

Transgender phenomena trouble one of the fundamental assumptions about the nature of reality – that there is a stable sex/gender binary wherein men and women are mutually exclusive, opposite categories, “whose differences are rooted in unchangeable material facts”.¹⁶⁹ In South Africa, like most countries, the legal system has been constructed on these perceived normative linkages. This perception has, in the past, required the use of medical tools alongside social and cultural tools to ensure its maintenance, in South Africa and elsewhere.¹⁷⁰ The focal point of this chapter is the perception, framing and treatment of the transgressive body, over time, as made visible in the development and dissolution of the relationship between legal perceptions and medical science.

¹⁶⁷ Stryker, S. (2008). *Transgender History*. Berkley: Seal Press.

¹⁶⁸ Stryker, S. (2011). *Transgender Studies 2.0 New Directions in the Field*. Presented at the University of Copenhagen, Center for Kønsforskning.

¹⁶⁹ Ibid.

¹⁷⁰ See: Meyerowitz, J. (2004). *How Sex Changed A History of Transsexuality in the United States*. Harvard University Press.

The Disguises Acts,¹⁷¹ as possibly the first instances of the legislative curtailing of gender transgressive behaviour in the early 1900s, function as this chapter's chronological entry point. The four known instances of the Acts' implementation allow one to track the evolving relationship between legislation and medical science in their attempts to control the unruly body. Internationally, medical science, most notably the field of sexology, has been paramount to addressing fears related to a variety of bodies that have been read as transgressive. Not least of these are the homosexual and the transsexual – both terms which in their originary sense functioned as diagnoses. The South African Medical Journal (SAMJ), as the voice of the South African medical fraternity, followed legal developments and international trends. This journal provides a means through which to track the arrival and inculcation of the field of sexology as a medical science, whose emergence was intimately bound to understandings of race and miscegenation or racial science in the form of eugenics. It one of the key arguments of this chapter that the outcome of this relationship between medical science and racial science was the materialisation of 'transsexuality' as a *medical and legal* entity directly "related to efforts to maintain the apartheid order".¹⁷² 'Maintenance' in this case translates into the State-sponsored construction of transsexuality as a cure to the perceived threat which homosexuality posed to the strength and structure of the gender-normative Afrikaner State.

A shift in legal perceptions regarding the fixity of sex or the malleability of the body ultimately led to the eventual dissolution of this medico-legal relationship, as South Africa began to transition towards Constitutional democracy in the 1990s. This shift marks this chapter's second chronological parameter. It is the visibility, perceptions and attempts to control transgender phenomena between the early 1900s and the 1990s by various entities – most notably the State – that have established the necessary groundwork for transgender to emerge, initially as a discourse used by subcultural organisations like the Phoenix Society, and to develop further into a definitive politics, which will be discussed in chapter two. It is the varied and shifting understandings, diagnoses and assemblages of the body, how it is constructed – deviant, inverted, sexually misaligned, homosexual, transsexual or transgender – by whom, and to what end, along with the social traction, limits, and the commingling of these knowledges/perceptions, that mark this chapter.

¹⁷¹ Here I am referring to a collection of Acts in South Africa prohibiting disguise. Namely: *Transvaal Law On Masks, False Beards or Other Disguises*, no. 2 of 1891; *Criminal Law Amendment Act of Natal*, Act no. 10 of 1910 S6(2)E; *Cape Colony Police Offences Act*, no. 27 of 1882 SVIII(2); *Orange River Colony Police Offences Ordinance*, no. 21 of 1902 S25(2).

¹⁷² Lock Swarr, A. (2012). *Sex in Transition*. New York: SUNY Press, p. 43.

1900- 1920: Race, Gender and Sexuality

Internationally the 20th century saw the emergence of two distinct, yet mutually constitutive, fields of 'scientific' study focused on the body, which would have a substantial impact on future notions of race, sexuality, gender and racial segregation in South Africa: eugenics and sexology. Eugenics, a form of scientific racism, melded science and social policy and argued, at its core, that the best and fittest of the population should reproduce while the reproduction of the unfit, particularly 'inferior races', should be curtailed. The eugenic movement had, at the time, gained a substantial foothold internationally, with societies, institutions and organisations devoted to its study in both Britain and the United States.¹⁷³ In the colonial metropole there were increasing concerns over issues of degeneracy, as racial decline was "linked to apocalyptically phrased fears about Empire and its ruling race".¹⁷⁴ Marked by a language of deviance, degeneracy and abnormality, eugenics was an ideological import to South Africa. By the early 1900s, as evidenced in the South African Medical Journal (SAMJ),¹⁷⁵ it was freely in circulation and "segregationist ideologues were quick to absorb eugenic thinking".¹⁷⁶ Moreover, as a former colony on the Southern African sub-continent, South Africa was considered one of the frontiers of this new racial science and several international figures in eugenics, including Francis Galton – one of its pioneers – travelled to the country.¹⁷⁷

New theories about the sub-continent began to emerge from a growing "corpus of colonial-based intellectuals". Simultaneously, a belief developed regarding the compatibility of white settlers – British and Dutch – and possible racial mixing as being advantageous to the new nation, while the separation of Africans from them through explicit racial segregation spoke to the growing field of eugenics in the country.¹⁷⁸ This understanding with regards to race and miscegenation was bound to very clear understandings of sex, sexuality and appropriate gender roles. In Europe, tentative steps were already underway in differentiating and cataloguing a plethora of behaviours and illnesses related to gender and

¹⁷³ Dubow, S. (2010). South Africa: Paradoxes in the Place of Race. In A. Bashford & P. Levine, *The Oxford Handbook of The History of Eugenics*. Oxford University Press.

¹⁷⁴ Chanock, M. (2001). *The Making of South African Legal Culture 1902-1936: Fear, Favour and Prejudice*. Cambridge: Cambridge University Press, p. 76.

¹⁷⁵ The South African Medical Journal was first published in 1884. It is the official Journal of the Medical Association of South Africa (MASA), a State-recognised body representing South African medical professionals.

¹⁷⁶ Dubow, S. (2010). South Africa: Paradoxes in the Place of Race. In A. Bashford & P. Levine, *The Oxford Handbook of The History of Eugenics*. Oxford University Press, p. 277.

¹⁷⁷ From this trip Galton produced one of his seminal works:
Galton, F. (1891). *Narrative of An Explorer in Tropical South Africa*. New York, London and Melbourne: Ward, Locke & Co.

¹⁷⁸ Dubow, S. (2010). South Africa: Paradoxes in the Place of Race. In A. Bashford & P. Levine, *The Oxford Handbook of The History of Eugenics*. Oxford University Press, p. 276.

sexuality within medical science or sexology. For leading sexologists like Henry Havelock Ellis, the “growing visibility of individuals who cross dressed or lived cross-gendered lives”¹⁷⁹ – early transgender phenomena – was a crucial site of discovery. Ellis is most often credited for work in sexology that “separated cross gender identification as well as those who cross dressed ... from homosexuality”.¹⁸⁰ In essence, he refined what had initially been known as inversion,¹⁸¹ a precursor to transsexual subjectivity,¹⁸² which “tended to conflate same-sex eroticism, cross-gendered identification and behaviour, cross-dressing, and hermaphroditism (both anatomical and psychosexual)”.¹⁸³

Sexology was considered closely aligned with the study of eugenics. Internationally, the two fields developed almost simultaneously: “sometimes they overlapped to such a degree that they were virtually indistinguishable”.¹⁸⁴ Certainly, there are clear overlaps and slippages in rhetoric as terms like *degeneracy*, imbued with a certain racialised logic, began to appear more frequently in relation to issues of sexuality.¹⁸⁵ This commingling of eugenics and scientific racism, with sexology, and their emergence in South Africa is abundantly clear in the SAMJ.¹⁸⁶ For South Africa, it was in Ellis that this dual development and the crossover between notions of racial science visibly demarcated on the body, and notions of sexuality and gender, became most clear. Ellis’s work and that of his peers was not lost on South African audiences: as early as 1909, Dr C. J. Westerfield noted the work of key minds in the field of sexology in the Presidential Address of the British Medical Association (BMA) delivered at the organisation’s Griqualand West Branch. In fact, so sure was he of his audience’s knowledge of the work of these individuals that when he reached the discussion of *Sexual Neurasthenia*¹⁸⁷ and *Psychology*, he informed the audience that the topic had

¹⁷⁹ Beemyn, G. (2013). A Presence in the Past: Transgender Historiography. *Journal of Women's History*, 25(4) p. 113.

¹⁸⁰ Meyerowitz, J. (2004). *How Sex Changed A History of Transsexuality in the United States*. Harvard University Press. p. 26.

¹⁸¹ A diagnosis that referred to the assumed inborn reversal of gender traits and sexual interest in the same sex.

¹⁸² Prosser, J. (1998). *Second Skins: The Body Narratives of Transsexuality*. Columbia University Press.

¹⁸³ Rosario, V. A., & Meyerowitz, J. (2011). Transforming Sex: An Interview with Joanne Meyerowitz, Ph.D., Author of *How Sex Changed: A History of Transsexuality in the United States*. *Studies in Gender and Sexuality*, 5(4), p. 474.

¹⁸⁴ Stern, A. M. (2010). Gender and Sexuality: A Global Tour and Compass. In A. Bashford & P. Levine (Eds.), *The Oxford Handbook of The History of Eugenics*. Oxford University Press, p. 184-185.

¹⁸⁵ Somerville, S. B. (2000). *Queering the Color Line: Race and the Invention of Homosexuality in American Culture*. Durham: Duke University Press, p. 31.

¹⁸⁶ Chauncey, G. (1983). From Sexual Inversion To Homosexuality: Medicine and the Changing Conceptualization of Female Deviance. *Salmagundi*, 58/59(Fall 1982-Winter 1983), p. 124.

¹⁸⁷ “Being, broadly speaking, a disorder of the unknown boundary-land between mind and body, observation on it must be made from two sides, from the psychological and

“been so thoroughly treated by the likes of “Krafft-Ebbing ... Magnus Hirschfeld, Havelock Ellis...I may say, almost *ad nauseum* - that to save time this evening, I will only mention the name.”¹⁸⁸ In future publications of the SAMJ, Ellis would be touted as the “standard English authority”.¹⁸⁹ As the ostensible colonial cultural touchstone for South African practitioners, Ellis was first and foremost a sexologist but had also published several essays on eugenics and was an active member of the Eugenics Education Society of England.¹⁹⁰ In 1907, Ellis noted in correspondence with Galton that part of his seminal project *Studies in the Psychology of Sex*, quite apart from its sexological focus, would be to “insinuate the eugenic attitude”.¹⁹¹

Siobhan B. Somerville notes that not only did sexology, initially, circulate within this “pervasive climate of eugenicist and anti-miscegenation sentiment and legislation”, but in many ways depended on it.¹⁹² The influence of eugenics as ‘a science’ on legal understandings and the use of the judicial system to curtail perceived dangers is evident as laws restricting the lives of black people through segregation began to emerge in the early 1900s.¹⁹³ Stryker notes similar developments in legislation in the US used to ensure normative gender behaviour, most visible in the regulation of public dress through ordinances and laws forbidding disguise.¹⁹⁴ Suggestively, as in South Africa’s case, these laws were often not about a broad definition of disguise but male-bodied people dressed as women.¹⁹⁵ Prior to the establishment of the Union of South Africa in 1910 there were several such Acts in existence within the country, directly addressing similar concerns over disguise. The first recorded arrest was *R v Lesson* (1906)¹⁹⁶: the accused was found “dressed

from the somatic side”. Source: Westerfield, C. J. (1909). Some Thoughts on Neurasthenia. *South African Medical Record*, VII(06, June), p. 150.

¹⁸⁸ Ibid., p. 153.

¹⁸⁹ Stohr, F. O. (1928). Homosexuality. *Journal of the Medical Association of South Africa*, II(09, September), p. 457.

¹⁹⁰ Somerville, S. B. (2000). *Queering the Color Line: Race and the Invention of Homosexuality in American Culture*. Durham: Duke University Press, p. 32.

¹⁹¹ Grosskurth, P. (1980). *Havelock Ellis: A Biography*. Toronto: McClelland and Stewart Ltd, p. 410.

¹⁹² Somerville, S. B. (2000). *Queering the Color Line: Race and the Invention of Homosexuality in American Culture*. Durham: Duke University Press, p. 31.

¹⁹³ Dubow, S. (2010). South Africa: Paradoxes in the Place of Race. In A. Bashford & P. Levine, *The Oxford Handbook of The History of Eugenics*. Oxford University Press.

¹⁹⁴ Stryker, S. (2008). *Transgender History*. Berkley: Seal Press, p. 31.

¹⁹⁵ The most crucial of these was the *Criminal Law Amendment Act of Natal*, Act no. 10 of 1910 which stated that the following would be understood as a crime:

(e) (In the case of a male person) being found dressed as a woman in circumstances indicating a probable intention of availing himself of such a disguise to commit a crime, whether such crime be known or not.

Critically, unlike the other Acts in existence, this was the only one that placed the onus on the accused to prove their innocence. Source: *Criminal Law Amendment Act of Natal*, Act no. 10 of 1910 S6(2)E.

¹⁹⁶ *R v Lesson* 1906 20 EDL 183.

in female attire with a bottle of beer in his pocket”.¹⁹⁷ The conviction was quashed because at this stage historically, there was no direct linkage to or perception of criminality.

Whereas in the future medical opinion would be called upon in such cases to assist with conviction, in the early 1900s in South Africa the “opinion of the profession ... [was] ... little considered”.¹⁹⁸ This was particularly true in matters regarding the public which medical practitioners of the time asserted should have brought individuals into contact “with Government authorities”¹⁹⁹. It is notable that while eugenics may have been the pervasive ideology of the time, enjoying a fairly broad-based appeal, sexology as its lesser-known travelling companion held a somewhat limited position in South African society, as did the opinion of medical science. The SAMJ suggests that the relationship between the State and the medical profession was somewhat strained. As Sir Kendal Franks opined in 1909, in his lecture on *The Position of the Medical Profession in South Africa*, this was partly due to the lack of a South African governing body with power to rectify the “deplorable” and “despised” state of the profession and its lack of direct link to the State through “a separate and distinct department in the Government of the Union with a medical man at its head”.²⁰⁰

Returning to the Acts themselves, it is unclear whether these types of laws regarding disguise specifically existed due to public outcry or a growing number of incidences of men disguising themselves as women. Clare Sears suggests that South Africa was not unique in utilising judicial means to ensure normative behaviour in the 1900s, but rather that this was part of a wider international turn, particularly visible in countries like South Africa with a growing concern over “the boundaries of sex, race, citizenship and city space”.²⁰¹ Other laws passed within the same time period such as the 1914 Immigration Act,²⁰² which explicitly prohibited persons convicted of sodomy or unnatural offences from settling in South Africa, can be read as further evidence of this turn.²⁰³ Although the intent of laws regarding disguise might not have been entirely evident at the time, the two-fold function of these laws would become abundantly clear: South Africa would eventually use them to exclude from public participation people whose gender was perceived as non-normative, while also

¹⁹⁷ Hctor, S. (2013). The Offence of Being Found in Disguise in Suspicious Circumstances. *Obiter*, 34(2), p. 316.

¹⁹⁸ Franks, K. (1909). The Position of the Medical Profession in South Africa. *The South African Medical Record* VII(12, December), p. 306.

¹⁹⁹ Ibid.

²⁰⁰ Ibid., p. 318.

²⁰¹ Sears, C. (2015). *Arresting Dress: Cross-Dressing, Law, and Fascination in Nineteenth-Century San Francisco*. Durham: Duke University Press, p. 10.

²⁰² Indeed, as will be addressed more fully in chapter two, along similar lines as the future Disguises Act, the Immigration Act would come to have a long history as a tool of exclusion that would eventually require dismantling in order to create a refugee regime in the country.

²⁰³ Epprecht, M. (2004). *Hungochani: The History of a Dissident Sexuality in Southern Africa*. Montreal: McGill Queens University Press.

defining the limited sphere of acceptable gender identities that would allow access in the future.²⁰⁴

1920s –1950s: Science, Sex and Sensationalism

Nearly twenty years after Sir Kendal Franks' lecture, as articles in the SAMJ from the time period suggest, it would seem that a far more conducive relationship between medical science and the state had begun to unfold, with a clear perception of the importance of medical science to the "enhanced national status" of the Union of South Africa.²⁰⁵ Indeed, the two key pitfalls pointed out by Franks seemed to have been overcome. In a speech read before the South African Medical Congress in 1928, the Assistant Health Officer for the Union of South Africa applauded the creation of "a single united medical association" which was touted as indicative of "increased local patriotism", noting,

With this local patriotism has come to individual practitioners a more intense sense of duty with regard to the building up of a healthy and virile nation. The medical-practitioner's share in nation building is no small one. He certainly does not yet take his proportionate place in the councils of nation building ... he has most important contributions to make to the country's legislation: contributions which cannot possibly be made by any legislator not trained in medicine²⁰⁶

In September of the same year, the SAMJ published arguably its first article directly addressing sexuality and gender entitled *Homosexuality*.²⁰⁷ At the time, homosexuality was still understood as a subcategory of the invert²⁰⁸ – a diagnosis which referred to the assumed inborn reversal of gender traits *and* sexual interest in the same sex.²⁰⁹ Pointing to the on-going circulation of concepts related to transgender phenomena, the SAMJ also published a review of Ellis's²¹⁰ work *Studies in the Psychology of Sex*²¹¹ in which he makes

²⁰⁴ Sears, C. (2008). Electric Brilliancy: Cross-Dressing Law and Freak Show Displays in Nineteenth-Century San Francisco. *Womens Studies Quarterly*, 36(3/4 fall-winter) p. 173

²⁰⁵ Cluver, E. (1928). The Medical Practitioner's place in local government and health administration in South Africa. *Journal of the Medical Association of South Africa*. 11(8, August), p. 434.

²⁰⁶ Ibid.

²⁰⁷ Stohr, F. O. (1928). Homosexuality. *Journal of the Medical Association of South Africa*, 11(09, September).

²⁰⁸ Ibid., p. 455.

²⁰⁹ It is the eventual splitting of inversion into homosexual and transsexual ("the former representing deviances of sexual orientation/object choice and the latter representing deviances of gender identity and bodily sex") that lead to the "unhinging of sexuality and gender." – Rubin, H. S. (1998). Phenomenology as Method in Trans Studies. *GLQ: A Journal of Gay and Lesbian Studies*, 4(2), p. 267.

²¹⁰ Unsurprisingly, Ellis, in his book *The Task of Social Hygiene*, held similar sentiments regarding race regeneration, hygiene and purity as those published in *Our White Population*. Moreover, in 1907 Ellis noted in correspondence with Galton that part of the project *Studies in the Psychology of Sex*, quite apart from its sexological focus, would be to "insinuate the eugenic attitude". Source: Havelock Ellis, H. (1919). *The Task of Social Hygiene* Retrieved February 1, 2015, from

reference to a term, 'eonism'²¹², often cited as the pre-cursor to both transvestism and the more surgically/medically-imbued transsexuality²¹³. Part of the substance of the article addressed the health and virility of the nation, underlining a belief that medical science, in this case sexology, should naturally be taken into account by leaders and legislators. As noted in *Homosexuality*, "the mental health specialist cannot help having his own opinion about how the law can best deal with mental abnormality".²¹⁴

As evidenced by the next known case of arrest under the Disguises Act, by the 1940s there was indeed a medical practitioner being called on by the courts to expound on their own scientific opinion regarding the behaviours, ailments and perceived abnormalities of the body. One of the first cases of conviction for being in disguise – *Rex v Ntokile Zulu* (1947) – was later overturned.²¹⁵ The Durban Magistrate's court charged the accused, from the Cato Manor informal settlement,²¹⁶ "who is a native male of the estimated age of 36 years", for masquerading in female attire when he was male.²¹⁷ At the request of the Reviewing Judge, who noted that Zulu was what the judge considered "sexually abnormal ... possessed of abnormal inclinations", a psychiatrist examined the accused.²¹⁸ The following extract was presented from the psychiatrist's report:

I find with respect to his mental and physical condition that his appearance and behaviour display all the signs and symptoms of acquired contrary sexual instinct and effemination. The history, although given by the prisoner, is consistent with this condition. He states that his mother reared him as a female child. He always associated with girls and women. He did the work of women, such as dressmaking. During the full period of my examination the prisoner's voice remained soft and

<http://www.gutenberg.org/files/9887/9887.txt>; Grosskurth, P. (1980). Havelock Ellis: A Biography. Toronto: McClelland and Stewart Ltd, p. 410.

²¹¹ Reviews: Studies in Sex-Psychology – Havelock Ellis. (1928). Reviews: Studies in Sex-Psychology – Havelock Ellis, *Journal of the Medical Association of South Africa* II(08, August), p. 452.

²¹² "Another kind of inversion which usually remains, so far as the sexual impulse itself is concerned, heterosexual, that is to say, normal. Inversion of this kind leads a person to feel like a person of the opposite sex, and to adopt, so far as possible, the tastes, habits, and dress of the opposite sex." – Ellis, H. (1927). *Studies in the Psychology of Sex, Volume II Sexual Inversion*. Retrieved from <http://www.gutenberg.org/files/13611/13611-h/13611-h.htm>

²¹³ Reviews: Studies in Sex-Psychology – Havelock Ellis. (1928). Reviews: Studies in Sex-Psychology – Havelock Ellis, *Journal of the Medical Association of South Africa* II(08, August), p. 452.

²¹⁴ Stohr, F. O. (1928). Homosexuality. *Journal of the Medical Association of South Africa*, II(09 September), p. 459.

²¹⁵ Hoctor, S. (2013). The Offence of Being Found in Disguise in Suspicious Circumstances, *Obiter* 34(2), 316–321.

²¹⁶ In a 2004 newspaper article the police commissioner of Point Police Station, Durban claimed:

"At one time in the 60s Durban had the largest transvestite population in the country. A whole suburb of Cato Manor settlement was made up of transvestites".

Kirk, P. (1997, May 3). Boy or Girl? Transvestites Pose Tricky Problem. *The Saturday Paper*.

²¹⁷ *Rex v Ntokile Zulu* 1947 (1) SA 241 (N) 1947 (1) SA p. 241

²¹⁸ Ibid.

effeminate in pitch and tone ... The accused's present state is practically tantamount to that of congenital sexual inversion.²¹⁹

It is the idea of 'sexual abnormality' tied to perceptions of gender non-conformity that is crucial here. It is not simply that being male-bodied and wearing female attire was considered problematic, but rather that this stated something about a person's sexual proclivities, a suggestion of inherent deviance which could be diagnosed – 'congenital sexual inversion'. Sears notes that, far from being anachronistic, these kinds of laws "had remarkable longevity and became a key tool for policing lesbian, gay, and transgender communities in the mid-twentieth century."²²⁰ This chapter will further highlight Sears' point. The crime became, rather than something to be committed with the disguise being indicative of intention, the disguise itself, and what it suggested about the individual's sexual proclivities in relation to the 'health and virility' of the nation.

Medical intervention and the language used, particularly the term 'inversion', can be read not only as indicative of a growing medico-legal relationship but also of broader shifts regarding transgender phenomena, placing emphasis on "dichotomies and difference" and policing "the boundaries of morality".²²¹ Internationally, by the late 1940s – largely due to the treatment of those of Jewish descent, among others, in Hitler's Germany – there was a distinct discrediting of eugenics and a growing effort to "engineer a scientific consensus that race was less a biological than a social and cultural phenomenon".²²² Saul Dubow argues that the recently-established Apartheid State had, due to the historical implementation of racial segregation, little need to invest explicitly in the biological difference of race but rather relied on "appeals to cultural difference and ethnic nationalism".²²³ Eugenics took on its own local colouring in South Africa from 1948, seen in the growing obsession with "the process of ordering, enumerating and controlling black South Africans".²²⁴ Further highlighting medico-legal constructions, Dubow specifically points to the Immorality Act of 1950 as a key piece of legislation demonstrating the continued influence of eugenics, "insofar as the maintenance of racial purity was a primary objective".²²⁵ With the notion of the historical interdependency of racial science and sexual science in mind, it becomes less

²¹⁹ *Rex v Ntokile Zulu* 1947 (1) SA 241 (N) 1947 (1) SA p. 241

²²⁰ Sears, C. (2015). *Arresting Dress: Cross-Dressing, Law, and Fascination in Nineteenth-Century San Francisco*. Duke University Press, p. 4.

²²¹ Stern, A. M. (2010). Gender and Sexuality: A Global Tour and Compass. In A. Bashford & P. Levine, *The Oxford Handbook of The History of Eugenics*. Oxford University Press, p. 187.

²²² Dubow, S. (2010). South Africa: Paradoxes in the Place of Race. In A. Bashford & P. Levine, *The Oxford Handbook of The History of Eugenics*. Oxford University Press, p. 283.

²²³ *Ibid.*

²²⁴ *Ibid.*

²²⁵ *Ibid.*

surprising that the same act would be amended nineteen years later to address perceived sexual immorality between people of the same sex.

This shift in the nature of the relationship between racial and sexual science saw a distinct increase in the mention of sexology in the SAMJ from the 1950s, well into the 1980s. This included regular reviews of journals²²⁶ and books related to the subject,²²⁷ the publishing of international conferences in Paris²²⁸ and Montreal,²²⁹ locally organised conferences in both Natal²³⁰ and Johannesburg,²³¹ and wider discussions with readers in the letters section.²³² Sexology was also gaining wider international visibility, with the US becoming something of a focal point due to the emergence of key minds in the field such as Dr. Alfred Kinsey, Dr. Harry Benjamin – credited with popularising the term transsexual²³³ – along with figures like Christine Jorgensen, commonly known as “the first media transsexual”.²³⁴ Jorgensen is often credited with bringing transsexualism to worldwide attention through media coverage, inaugurating “a new era of comprehensive, even obsessive coverage”²³⁵ and sparking increased medical interest in the nature of sex and gender. One of the by-products of this interest was the conceptual travel of ideas regarding transsexualism into the public sphere. Both Jorgensen and her physician, Dr. Christian Hamburger, received considerable mention in SAMJ, although not initially as a ‘transsexual’.²³⁶ It was not only in SAMJ that Jorgensen received considerable coverage; in the early 1950s she also appeared in the South African press as one transgender person remembers:

²²⁶ A 1952 review of the Journal of Sexology – which included subjects such as Neurotic counterfeit sex and the influence of heterosexual culture on the attitudes of homosexuals – noted that “this is a Journal worthy of active support”. Review of Books– Sexology. (1952). Review of Books – Sexology. *South African Medical Journal*, XXVI (05 May), p. 404.

²²⁷ The International Journal of Sexology. (1949). The International Journal of Sexology. *South African Medical Journal*, XXIII(09, September), p. 760.

²²⁸ International Congress of Medical Sexology. (1974). International Congress of Medical Sexology. *South African Medical Journal*, XLVIII(06, June), p. 1355.

²²⁹ Ibid., p. 1766.

²³⁰ Notices – Human Sexuality Seminar. (1983). *South African Medical Journal*, 63(03, March), p. 384.

²³¹ University of the Witwatersrand Medical Students' Council: Annual Conference. (1975). *South African Medical Journal*, XLIX(08, August), p. 1537.

²³² Gillman, M. A. (1984). Correspondence – Nominations for the Who's Who of Sexology. *South African Medical Journal*, LXV(02, May), p. 834.

²³³ Benjamin, H. (2006). Transsexualism and Transvestism as Psycho-Somatic and Somato-Psycho Syndromes. In S. Stryker & S. Whittle (Eds.), *The Transgender Studies Reader*. New York: Routledge, p. 45.

²³⁴ Meyerowitz, J. (2004). *How Sex Changed A History of Transsexuality in the United States*. Harvard University Press, p. 49.

²³⁵ Ibid.

²³⁶ Editorial. (1956). What Endocrinology is Not: The No-Man's Land of Medicine. *South African Medical Journal*, 21, p. 488-489.

The press, needless to say, made lurid copy of the event. Well do I recall a day in the early fifties, coming home from work and passing a magazine shop. Displayed in the window was a magazine (I think it was either *Femina* or the *Outspan*) with 3cm tall black type – no picture, just bold black type: 'I WAS A MAN I BECAME A GIRL'. They were already sold out but I managed to persuade the clerk to let me have the last copy displayed in the window²³⁷

The SAMJ received, in 1953, a copy of the new edition of *International Journal of Sexology* (1952) for review: the edition contained an article entitled *The Mind of the Transvestite*.²³⁸ However, it was not until 1954 that the first mention of issues pertaining to the possibility of changing sex appeared in the SAMJ.²³⁹ Noting the widespread media fascination at the time, the SAMJ's 1954 article opened by stating:

Sex sensationalism often grips the public imagination, so that, when 2 adult 'males' become transformed into 'females', the one with the aid of plastic surgery and hormones, many members of the lay public became puzzled, and even so far misled as to believe that anyone can be 'changed' into the opposite sex at any time if he or she so desires.²⁴⁰

In 1954, the article *Medico-Sociological Data in the Field of Homosexuality* depicted a broad range of individuals describing variations of sexual inversion that could lead to homosexuality "as well as other perversions of character and conduct".²⁴¹ This article clearly referenced wider international work and also suggested cross-pollination from other academic fields, citing both Ellis and Hirschfeld. Two years later, in 1956, the SAMJ returned to the question of sex change, again acknowledging the visibility of individuals within the media and refining the categories of understanding:

Homosexuality is a mental ambivalence, not an endocrine one; transvestism the same. Transvestites, such as 'Christine Jorgensen', have been recently much in the news. It is worth emphasising that these people are, anatomically, perfectly normally unisexual (usually male), who 'feel' that they really should have been born into the other sex. Whether they ever merit an operative 'change of sex' is not a problem for the endocrinologist".²⁴²

For the most part of the 1950s, individuals who wanted to undergo sex reassignment were thought of as transvestites and/or homosexuals. However, there was a shifting medical and cultural climate with regards to sex within South Africa best summed up by *The C. Louis Leipoldt Memorial Lecture*,²⁴³ entitled *The Role of Sex in Human Evolution*. This

²³⁷ FanFare. (May 1989). *FanFare*, Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at 'Joy Wellbeloved Collection' – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand. p. 10.

²³⁸ Editor. (1953). Reviews of Books. *South African Medical Journal*, XXVI.

²³⁹ Singer, R. (1954). Possibilities of Sex Reversal. *South African Medical Journal*, 28(16).

²⁴⁰ *Ibdi.*, p. 329.

²⁴¹ Freed, L. F. (1954). Medico-Sociological Data in the Therapy of Homosexuality. *South African Medical Journal*, XXVIII(10, November), p. 1023.

²⁴² Editorial. (1956). What Endocrinology is Not: The No-Man's Land of Medicine. *South African Medical Journal* (21), p. 488-489.

²⁴³ Recognised for being a pioneer of Afrikaans and for his wielding of the pen "in the cause of Medicine and for the advancement of the Medical Association of South

lecture suggested a growing cross-pollination of knowledge, not simply in relation to medico-legal perceptions, but in academic understandings as well. The lecture noted the interplay and overlap of different systems of knowledge, such as anthropology with medicine, in coming to a greater understanding of sexual relationships and sexual morphology: “Sex is not an absolute but only a relative quality. It explains why there are degrees of sex, why there are mannish women and effeminate men, and it goes a long way towards explaining the perversions of sexual behaviour”.²⁴⁴

1960s: Transsexualism and ‘Masquerading as women’

While the first half of the 1900s certainly saw transgender phenomena come into greater visibility, and a growing relationship between medico-legal perceptions with eventual cross-pollination into academia, it is the appearance of stories like Jorgenson’s as shock-value items in local news media that facilitated the conceptual travel of ideas like ‘sex change’ into the public sphere.²⁴⁵ Prior to this there had been little mention in public media, although the SAMJ notes some reporting on “degenerate types” appearing in the “lay press” in the late 1920s.²⁴⁶ By the 1960s, Dhianaraj R. Chetty argues that rather than simply providing “exposés of queer life”, top-selling publications with a largely black audience like *Drum Magazine* and the *Golden City Post* actually generated their own news, utilising transgender phenomena as particular avenues of titillation for their readership.²⁴⁷ This is visible in stories trumpeting headlines like ‘I Changed My Sex’²⁴⁸ or in articles published on

Africa”. Source: Drennan, M. R. (1958). The Role of Sex in Human Evolution. *South African Medical Journal*, XXXII(06, December), p. 1176.

²⁴⁴ Drennan, M. R. (1958). The Role of Sex in Human Evolution. *South African Medical Journal*, XXXII(06, December), p. 1178.

²⁴⁵ In 1965, *Drum* actually covered the story of three friends arrested for masquerading as women – John ‘Joan’ Kruger, Edward ‘Edna’ Hobles and Mohamed ‘Sonia’ Kola, better known as S v Kola. Two of the accused’s friends took what Chetty describes as “extreme measures to avoid persecution”: both had sex change operations. Source: Chetty, D. R. (1994). A Drag at Madame Costello’s: Cape Moffie life and the Popular Press in the 1950s and 1960s. In M. Gevisser & E. Cameron (Eds.), *Defiant Desire: Gay and Lesbian Lives in South Africa*. Braamfontein: Ravan Press, p. 122.

²⁴⁶ Editor. (1928). Our White Population. *The Journal of the Medical Association of South Africa*, 11(10); Don, A. M. (1963). Transvestism and Transsexualism. *South African Medical Journal*, XXXVII(05, May), p. 258.

²⁴⁷ The *Golden City Post* published a story in 1955 about a female-bodied person living as a man. Although Chetty represents this person as a cross-dressing lesbian gangster, In the words of ‘Johnny’ Williams, the gangster in question, “I was not playing the fool when I disguised myself as a man. I did it because I hate to be a woman”. Later in the article Johnny declares outright, “I am a man myself”. – Excerpt from *Golden City Post* and *Drum Magazine Post*, & Chetty, D. R. (1994). Lesbian gangster: The Gertie Williams Story. In M. Gevisser & E. Cameron (Eds.), *Defiant Desire: Gay and Lesbian Lives in South Africa*. Braamfontein: Ravan Press, p. 130.

²⁴⁸ Chetty, D. R. (1994). A Drag at Madame Costello’s: Cape Moffie life and the Popular Press in the 1950s and 1960s. In M. Gevisser & E. Cameron (Eds.), *Defiant Desire: Gay and Lesbian Lives in South Africa*. Braamfontein: Ravan Press, p. 116.

the scandalous ‘moffies’²⁴⁹ of Cape Town. The *Golden City Post*, for instance, organised the Moffie Queen Competition which was held in Athlone in 1967.²⁵⁰ For Chetty, “the moffies were inevitably in drag; they were effete, theatrical, tragic or comic. Alternatively, they were cast as social pariahs, wallowing in self-pity and praying for a sex change operation”²⁵¹.

At the same time, the growing refinement in medical categories – partly spurred on by the growing availability of technology and knowledge – saw greater medical engagement with notions of sex change. Internationally, sexology had shifted its centre from Europe to the US. This would be surprisingly impactful for South Africa, as the country had, for the most part, only kept up with international developments in the field due to its intellectual colonial lineage. The shift saw American surgeons publicly engage with sex reassignment surgery and Harry Benjamin establish himself as the spokesperson for transsexual treatment.²⁵² This was facilitated largely through the publication of his book *The Transsexual Phenomenon*.²⁵³ Although the term transsexual can be accredited to Hirschfeld as early as 1949,²⁵⁴ transsexualism was only differentiated from transvestism explicitly for the first time in SAMJ in 1963.²⁵⁵ In the first full page article on the topic, *Transvestism and Transsexualism*, author Alexander Don describes transvestism “as behaviour by an individual who prefers to wear the clothes of the opposite sex and who desires to be accepted in the social organisation as an individual of the opposite sex. Transsexualism refers to those cases where in addition the urge exists to undergo a sex-conversion operation”.²⁵⁶ Don notes the work of Havelock Ellis and Jorgensen’s physician Dr. Hamburger.²⁵⁷ Unlike Benjamin, Don was not a great supporter of sex change surgery; indeed, in the four case studies his article presents, he rejects it outright and suggests hormone and electro-shock therapy as far more effective options, but only in cases where the patient “genuinely desire[d] to stop cross-dressing”.²⁵⁸ He added, clearly suggesting a wider public knowledge about where to access surgical intervention, “unfortunately, such patients probably comprise a small minority only,

²⁴⁹ A slang term common in South Africa, sometimes used in a derogative manner to describe a male homosexual.

²⁵⁰ Chetty, D. R. (1994). A Drag at Madame Costello's: Cape Moffie life and the Popular Press in the 1950s and 1960s. In M. Gevisser & E. Cameron, *Defiant Desire: Gay and Lesbian Lives in South Africa*. Braamfontein: Ravan Press, p. 119.

²⁵¹ Ibid., p. 120.

²⁵² Meyerowitz, J. (1998). Sex Change and the Popular Press: Historical Notes on Transsexuality in the United States, 1930-1955. *GLQ: A Journal of Gay and Lesbian Studies*, 4(2).

²⁵³ Benjamin, H. (1966). *The Transsexual Phenomenon*. New York: The Julian Press.

²⁵⁴ Whittle, S. (2010, June 2). A brief history of transgender issues. *The Guardian*. Retrieved December 2, 2014, from <http://www.theguardian.com/lifeandstyle/2010/jun/02/brief-history-transgender-issues>

²⁵⁵ Don, A. M. (1963). Transvestism and Transsexualism. *South African Medical Journal*, XXXVII(05, May).

²⁵⁶ Ibid., p. 479.

²⁵⁷ Ibid., p. 482.

²⁵⁸ Ibid., p. 485.

and the remainder, if adamant enough, will seek treatment in countries where surgical reconstruction is available".²⁵⁹ Don also notes concerns within the medical fraternity over the legal impediments of the Disguises Act to those changing sex.²⁶⁰ Indeed, doctors had begun to provide their patients with letters in an effort to "exempt their patients from the law".²⁶¹

One of the most widely referenced cases relating to the production and policing of gender in South Africa is *S v Kola* 1966.²⁶² This case set the precedent for what would later come to be an amalgamated Disguises Act (1969), drawing principally on both the Transvaal²⁶³ and Natal Acts, and was used definitively to police gender-transgressive behaviour. Kola – the accused – wearing a dress and make up was arrested in the company of "two other males, similarly dressed".²⁶⁴ This was not the accused's first arrest and in both cases they had been dressed as a woman and also appeared in court dressed as such. The case itself was pivotal to further understandings of disguise in relation to gender normativity, in that it raised the question of the exact connection between criminal intent (and what could be considered as such) and Kola's 'disguise' as a woman. In a clear shift towards perceived criminality, Kola became one of the first actually to be convicted for being in a 'disguise'. As with Zulu²⁶⁵, medical opinion was sought from the district surgeon:

Although his general physical configuration (e.g. his build and hips) and sexual organs were those of a male, the pitch and tone of his voice and the style of the hair on his head were feminine, that possibly he had a sexually inverted mind, which was congenital, and that he was in consequence a psychological misfit or deviate [sic]²⁶⁶

It may seem obvious that this case provides a specific historical reading of perceptions of gender, sex and sexuality shaping medical practitioners' reasoning. Kola is read as physically male but manifesting feminine behavioural patterns through expression. The surgeon's conclusion based on this was that Kola's mind was the opposite of what it should be – female instead of male – and that this was congenital. A reading of congenital sexual inversion is not only terminology directly attributable to Havelock Ellis, but a direct suggestion of problematic sexuality – homosexuality. Kola provides a clear instance of

²⁵⁹ Ibid., p. 485.

²⁶⁰ Ibid., p. 484.

²⁶¹ Lock Swarr, A. (2012). *Sex in Transition*. New York: SUNY Press p. 59

²⁶² *S v Kola* 1966 (4) SA 322 (A) 1966 (4) SA p. 322.

²⁶³ "Whereas it has appeared that by the use of masks, false beards and disguises, fraud has more than once been committed, the public being thereby lead to believe that it has to deal with another person than is actually the case ... be it hereby enacted and provided as follows: –

1. The wearing or use of masks, false beards or other means whereby disguises are effected, in public roads or other public places is forbidden" Source: *Transvaal Law On Masks, False Beards or Other Disguises*, Law no. 2 of 1891 S1.

²⁶⁴ *S v Kola* 1966 (4) SA 322 (A) 1966 (4) SA, p. 322.

²⁶⁵ *Rex v Ntokile Zulu* 1947 (1) SA 241 (N) 1947 (1).

²⁶⁶ *S v Kola* 1966 (4) SA 322 (A) 1966 (4) SA, p. 322.

transgender phenomena from which to plot socio-cultural perceptions and wider influences in South Africa around the time of the Disguise Act. Within South Africa, sex reassignment procedures began to increase from the 1960s, following a timeline similar to that of the US and UK.²⁶⁷ However, the social and political landscape differed considerably.

Throughout the 60s there had been burgeoning concern within Apartheid's National Party government over homosexuality, considered an aberration and a direct threat to the State and to Calvinistic morals. As Marc Epprecht argues, "The military establishment regarded homosexuality as indicative of psychological weakness or unfitness for the coming battle. It also suggested vulnerability to communist blandishments or political opposition to apartheid".²⁶⁸ The notion that transsexuality might function as cure for homosexuality in South Africa was not that far-fetched, given both the medical and legal perceptions at the time. A 1967 paper by J. Strauss, noting both Jorgenson and the work of Benjamin, put forward the question for South Africa in relation to a case in Argentina where the courts convicted an Argentinian surgeon for defying "all that nature imposes" by attempting to change a man into a woman as a means of "curing homosexuality".²⁶⁹

This fear of homosexuality was brought to the fore when a gay party was raided in Forest Town, Johannesburg, in 1966. Partygoers were detained and pictures were taken and published by several leading media publications.²⁷⁰ It became clear after the party that the police did not have enough legal clout to address what Mark Gevisser has termed the "queer conspiracy".²⁷¹ At the time the 1957 Immorality Act²⁷² only addressed public offences and therefore couldn't be utilised against partygoers in a private residence. It was also fairly impossible to prosecute any of the nearly 350 partygoers under common law, anti-sodomy laws, or public indecency law.²⁷³ Among those detained though, nine were

²⁶⁷ Dr. Derk Crichton notes that between 1969 and 1993 he performed 58 "gender reassignment surgeries" in Durban. Source: Crichton, D. (1993). Gender Reassignment Surgery for Male Primary Transsexuals. *South African Medical Journal*, 83, p. 347.

²⁶⁸ Epprecht, M. (2004). *Hungochani: The History of a Dissident Sexuality in Southern Africa*. Montreal: McGill Queens University Press, p. 147.

²⁶⁹ Strauss, S. A. (1967). The Sex-Change Operation: Two Interesting Decisions. *South African Law Journal*, 84, p. 218.

²⁷⁰ Bruno recalls hearing his name on the radio, seeing it in the Daily Mail and Die Beeld. GALA. (1997, September 3). Interview with Michele Bruno. *Gay and Lesbian Archives*.

²⁷¹ Gevisser, M. (1994). A Different Fight for Freedom: A history of South African Lesbian and Gay Organisation from the 1950s to the 1990s. In M. Gevisser & E. Cameron (Eds.), *Defiant Desire: Gay and Lesbian Lives in South Africa*. Braamfontein: Ravan Press, p. 31.

²⁷² *The Immorality Act*, no. 23 of 1957.

²⁷³ Hoad, N. (2010). Introduction. In N. Hoad, G. Reid, & K. Martin (Eds.), *Sex and Politics in South Africa*. Cape Town: Double Storey Publishers.

charged, under the Disguises Act, for “masquerading as women”.²⁷⁴ To address this perceived legislative gap, the Immorality Act²⁷⁵ was amended, along with an amalgamated Disguises Act,²⁷⁶ drawing on Kola as precedent.²⁷⁷ The aim of this was, arguably, to bring legislation in line with the State’s fear of homosexuality, which can be understood as a concomitant fear of deviation from dichotomous heterosexually-orientated gender roles.

The Disguises Act’s reach – though it affected some homosexuals, i.e. those who dressed in drag – went far beyond curtailing sexual deviation and extended to implying a kind of gender normativity ostensibly expected by the State. One of the few academic articles to mention the Act argues that it represented a clear moment of the Apartheid State’s attempt at “social control” which went beyond issues of race.²⁷⁸ The new Act was broader and no longer made it necessary for the State to prove “that the circumstances in which the accused was found, gave rise to an inference that he had the intention ... to commit ... [an] offence”.²⁷⁹ The onus was on the accused to prove the absence of intention to commit any crime.²⁸⁰ In essence, should a male-bodied individual be found in a dress, they would be considered, for all intents and purposes, already guilty under law of some or other offence.²⁸¹ Arguably, this created a substantial tool in the hands of the State to police and guard against any form of gender transgression.

As the incident at Forest Town suggests, it was not only black and coloured communities in South Africa who found their gender expression legally curtailed and medically scrutinised. However, the trajectory for white South Africans, considering the very real political impact and largely inherent privilege that Apartheid bestowed on them, was somewhat different. Amongst the earliest organisations addressing issues regarding gender identity/expression internationally was Phi Phi Epsilon (FPE) (USA) – a society established by Virginia Prince, along with the journal *Transvestia*. Prince’s original organisational model was based on the notion of a secret society with a newsletter, a contact system and

²⁷⁴ Gevisser, M. (1994). A Different Fight for Freedom: A history of South African Lesbian and Gay Organisation from the 1950s to the 1990s. In M. Gevisser & E. Cameron (Eds.), *Defiant Desire: Gay and Lesbian Lives in South Africa*. Braamfontein: Ravan Press, p. 30.

²⁷⁵ *The Immorality Amendment Act*, no. 57 of 1969.

²⁷⁶ *The Prohibition of Disguises Act*, no. 16 of 1969.

²⁷⁷ Lock Swarr, A. (2012). *Sex in Transition*. New York: SUNY Press, p. 53.

²⁷⁸ Jespersen, R. R. (1976-1977). The Jurisprudential Problem of Apartheid. *Texas S.U.L. Review*, 4, p. 323.

²⁷⁹ *The Prohibition of Disguises Act*, no. 16 of 1969.

²⁸⁰ Hoor, S. (2013). The Offence of Being Found in Disguise in Suspicious Circumstances. *Obiter*, 34(2), 316–321.

²⁸¹ Hoor argues that this instance of ‘reverse onus’ has consistently been struck down by the Constitutional Court as it infringes on the right to be presumed innocent. Hoor, S. (2013). The Offence of Being Found in Disguise in Suspicious Circumstances. *Obiter*, 34(2), 316–321.

occasional meetings.²⁸² FPE grew to have access to international networks, including the Beaumont Society (UK), publishers of the widely circulated Beaumont Bulletin²⁸³ and initially a chapter of FPE, established in 1966²⁸⁴. The Beaumont Society had members in not only the UK but “in Kenya and the old Empire”²⁸⁵ including South Africa. Emphasising the many ways in which ideas and knowledge commingle and circulate, a member of FPE – at the behest of Prince – actually made a visit to South Africa in 1965 to “find and investigate” a cross dresser, Lady Roma Burnie, who had made contact with the organisation.²⁸⁶ Prince’s “emissary” was able to provide Roma with information on both the organisation and transvestism, noting in correspondence with Prince that “poor Roma had been in the dark”.²⁸⁷ The gay community and gay organisations galvanised around the Immorality Act, starting the Legal Reform Fund (LRF) and what would become the beginnings of a ‘gay movement’ in South Africa. On the other hand, the secretive nature of organisations like Beaumont, even with members in South Africa, was such that it impeded any possible involvement with any kind of politics, including resistance, and so the Disguises Act was passed unimpeded.²⁸⁸

1970s: A Change of ‘Sex’

Genny Beemyn argues that the emergence of subcultural organisations like Beaumont and FPE marks the beginning of a turn away from the medico-legal control of language and identity, as individuals began to document their own experiences, lives and communities.²⁸⁹ Prince is most often credited with the term ‘transgenderal/ transgenderist’, used for the first time in 1969.²⁹⁰ She used it specifically to signify a turning away from the medically-imbued and controlled ‘transsexual’, arguing that she had “transed” gender and not sex.²⁹¹ In 1978 she changed the term to ‘transgenderist’. Ekins and King claim that ‘trans-gender’ may have been used as an umbrella term for the first time in the UK at the 1974 Beaumont

²⁸² Ekins, R., & King, D. (2006). *Transgender Phenomenon*. London: Sage.

²⁸³ L100, A. (2005.). A History of the Beaumont Society. *Beaumont Magazine*, 13(5), p. 3.

²⁸⁴ The Beaumont Society. (2013). *History*. Retrieved December 6, 2014, from <http://www.beaumontsociety.org.uk/history/>

²⁸⁵ L100, A. (2005.). A History of the Beaumont Society. *Beaumont Magazine*, 13(5)

²⁸⁶ *FanFare*. (June 1995). *FanFare* (winter edition), Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Joy Wellbeloved Collection’ – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand. p. 4.

²⁸⁷ *Ibid.*, p. 5

²⁸⁸ Gevisser, M. (1994). A Different Fight for Freedom: A history of South African Lesbian and Gay Organisation from the 1950s to the 1990s. In M. Gevisser & E. Cameron (Eds.), *Defiant Desire: Gay and Lesbian Lives in South Africa*. Braamfontein: Ravan Press.

²⁸⁹ Beemyn, G. (2013). A Presence in the Past: Transgender Historiography. *Journal of Women's History*, 25(4).

²⁹⁰ Ekins, R., & King, D. (2006). *Transgender Phenomenon*. London: Sage.

²⁹¹ Feinberg, L. (1997). *Transgender Warrior*. Boston: Beacon Press p. X

Society Conference in Leeds.²⁹² They would later credit Alice Purnell, former President of Beaumont and founder of *The Gender Trust* – a transgender-specific organisation established in 1990 – for being “possibly THE first to introduce the term ‘transgenderist’ to a British audience”.²⁹³ This lineage is integral because *The Gender Trust* would eventually go on to assist in establishing South Africa’s first transgender organisation, as will be discussed in chapter two. While the term ‘transgenderist’ was slowly beginning to surface in wider popular culture in both Western Europe and the US by the 1970s, South Africa was experiencing growing international condemnation as the Apartheid State continued with its project of complete social control and repressive militarisation.

As noted, homosexuality and transsexuality were in many ways portrayed as two sides of the same coin in South Africa (unlike in the US and Western Europe), with control explicitly reinvested by State powers in the hands of medico-legal gatekeepers. Growing State control meant clearly delineated and policed categories of being. Nowhere was this more evident than the growing investment in the medicalisation of notions of sex and sexuality, achieved through the creation of sex change clinics at tertiary academic hospitals, and the use of sex change to ‘cure’ deviant sexuality within the military. State investment in public sector medical management is certainly clear; by 1970, Groote Schuur Hospital,²⁹⁴ a tertiary academic facility, offered several necessary services to “transgender patients”.²⁹⁵ The SAMJ notes numerous talks held at the hospital’s Psychiatric Outpatient Department on the subject of ‘transsexualism’ and ‘sex change’.²⁹⁶ H.F. Verwoerd Hospital in Pretoria offered similar services. Although there is very little information available on this institution pre-1990, it seems that by 1977 this public hospital actually had a “Transsexual Clinic” in operation.²⁹⁷

Alongside medical investment, legal facilitation was created through an amendment to the *Births, Deaths and Marriages Registration Act 51 of 1974*, “in order to provide that the sex description of a person who had undergone a change of sex may be altered in his birth

²⁹² King, D., & Ekins, R. (2007). The First UK Transgender Conferences, 1974 and 1975. *Gendys Journal*, Autumn(39).

²⁹³ Ekins, R., & King, D. (2004). *Rethinking “Who put the ‘Trans’ in Transgender?”*. Presented at The Eighth International Gender Dysphoria Conference, Manchester, England.

²⁹⁴ An article printed in The Star Newspaper in 1980 claimed that in “1969 and 1975 at Groote Schuur Hospital alone, out of a total of 62 referred cases, 32 had sex change surgery”. Kennaugh, B. (1980, March 5). Plight of in-between People. *The Star*.

²⁹⁵ Wilson, D., de Villiers, A., Marais, A., Addinall, R., & Campbell, M. M. (2014). Transgender issues in South Africa, with particular reference to the Groote Schuur Hospital Transgender Unit. *South African Medical Journal*, 104(6), p. 450.

²⁹⁶ Editor. (1977). Passing Events: In die Verbygaan. *South African Medical Journal*, XLIII(04, April), p. 489.

²⁹⁷ Theron, A. (1980). Criteria for the Evaluation of Male-to-Female Transsexual Patients. *South African Family Practice Journal*, 1(10), 5-7.

register”.²⁹⁸ Notably, when the Bill was presented to the National Assembly, the response was remarkably supportive, with the change even being referred to as “essential”²⁹⁹ and the struggles of transsexuals with regards to being able to adjust their sex as a “terribly real problem”.³⁰⁰ Parliamentarians expressed concern for those “who find themselves in this unfortunate position”.³⁰¹ The Deputy Minister of the Interior argued that it was simply perfunctory necessity to give a legal foundation “to an administrative practice which has been followed for some time in respect of altering birth registers”.³⁰² Pointing, again, to medico-legal collusion in correcting and establishing acceptable sex, the Minister went on to add that in order to change sex in the register they would need medical reports and a possible examination of the applicant in question.³⁰³

The discussion regarding the Bill shows a certain level of knowledgeability and awareness, explicitly drawn from international understandings on the subject. Those present noted “judgements in other countries dealing with this problem”,³⁰⁴ singling out how the matter had been dealt with in Britain, and by extension suggesting continued judicial, medical and intellectual influence.³⁰⁵ Unlike the British, who had entered into similar Parliamentary discussions in 1970 following the decision in *Corbett vs Corbett* – which saw the creation of the infamous Ormond test – legal relief was afforded to post-operative transsexuals in South Africa.³⁰⁶ For the British parliament, the fear was “that recognition of the post-operative patient's new sex ... [would] ... herald the opening of the flood-gate to a tide of single-sex marriages”.³⁰⁷ The difference here was that in Britain by the 1970s, homosexuals were already considered an arguably altogether different group of people. While South Africa had enforced a greater crackdown on homosexuality, the UK had begun to decriminalise it.³⁰⁸

The discussion in the South African parliament makes surprising mention of the impact of a popular culture reference – Jan Morris’s³⁰⁹ worldwide bestseller *Conundrum*.³¹⁰ It is also

²⁹⁸ *Births, Marriages and Deaths Registration Amendment Act*, no. 51 of 1974.

²⁹⁹ *Births, Marriages and Deaths Registration Amendment Bill Second Reading, Debates of the House of Assembly* (3 October 1974) p. 4443.

³⁰⁰ *Ibid.*, p. 4444.

³⁰¹ *Ibid.*

³⁰² *Ibid.*, p. 4441.

³⁰³ *Births, Marriages and Deaths Registration Amendment Bill Second Reading, Debates of the House of Assembly* (3 October 1974).

³⁰⁴ *Ibid.*, p. 4442.

³⁰⁵ *Ibid.*

³⁰⁶ Taitz, J. (1988). A Transsexual's Nightmare: The Determination of Sexual Identity in English Law. *International Journal of Law and the Family*, 2, p. 144.

³⁰⁷ *Ibid.*, p. 145.

³⁰⁸ Sexual Offences Act 1967 (UK) c 60

³⁰⁹ Morris mentions several key moments in her transition which took place in Africa. She also reminisces about her time in South Africa prior to transitioning and during her transition. She notes calling on a friend in the Cape during her transition; “a Xhosa

noteworthy that throughout the discussion, and in every single example mentioned, the focus of transition was from male to female. The discussion makes several points clear: this was a matter those present felt sympathetic towards; there was a sincere belief that an individual was able to change sex, but only with the assistance of medical professionals; and that legislation should be put in place to assist rather than aggravate this process. Furthermore, there was a very clear understanding that the right to designate sex lay within medico-legal framings of such, and that the political State should have control over the designation of correct sex, since “personal files of all persons are retained at the central registry of the Department of the Interior ... these documents of proof will be filed there as part of the permanent record pertaining to the individual”.³¹¹ Merely two years after implementing the amended Act, the courts made a decision in the case of *W v W*,³¹² drawing on the infamous UK case of *Corbett v Corbett*³¹³, that sex, *for the purposes of marriage*, was fixed and immutable.³¹⁴ Regardless of this decision, the Act allowing a change in sex in the Birth Register still stood until 1992, but in all decisions from this point onwards, the validity of legal transitions were decided on a case by case basis.³¹⁵

Perhaps the greatest sign of the Apartheid government’s investment in medico-legal approaches to maintaining the hetero-patriarchal order was the work undertaken by Dr. Aubrey Levin – also known as Dr. Shock due to his penchant for aversion therapy – at the

wise woman, telling my future in her dark hut of the Transkei, had assured me long before one day I would be a woman too” – Morris, J. (1972). *Conundrum*. New York: Harcourt Brace Jovanovich, p. 105 & 110-111.

³¹⁰ Births, Marriages and Deaths Registration Amendment Bill Second Reading, Debates of the House of Assembly (3 October 1974) p. 4442.

³¹¹ *Ibid.*, p. 4448.

³¹² The change in legal status was brought on by a case in which an individual, who had been assigned male at birth, had undergone sex reassignment, changed their marker in the Birth Register to female, and later entered into an ostensibly heterosexual marriage with a female. The wife filed for divorce in the Witwatersrand Local Division on the grounds of adultery. In the process, the actual validity of her marriage came into question and the court chose to apply the highly controversial Ormond Test from the English case of *Corbett vs Corbett* (1970). The court held that the plaintiff was male, noting “imitation cannot be equated with actual transformation” and that by extension the marriage was void. *W v W* 1976 (2) SA 308 (W)1976 (2) SA p. 308

³¹³ In 1970, the case of *Corbett v Corbett* became the precedent for the determination of legally-recognised sex, applying what would later become known as the Ormond Test. In the case, nine doctors gave evidence suggesting four factors that were considered integral to delineating sex: chromosomes, genitals, gonads and psychology. The case dealt with the validity of a marriage between Arthur Corbett, a cis-gendered male, and April Ashley a ‘post-operative male-to-female transsexual woman’. Justice Ormond defined marriage as the union of a man and a woman and the cornerstone of the family, “in which the capacity for natural heterosexual intercourse is an essential element”. Ormond distinguished sex from gender: he posed gender as cultural, while sex was biological, determined at birth and unchangeable. *Corbett v Corbett (otherwise Ashley)* 1970 2 All ER 33.

³¹⁴ *W v W* 1976 (2) SA 308 (W)1976 (2) SA, p. 308.

³¹⁵ Lock Swarr, A. (2012). *Sex in Transition*. New York: SUNY Press.

notorious Ward 22 at 1 Military Hospital Voortrekkerhogte.³¹⁶ *The Aversion Project*, published in 2001, asserts that as many as 900 sex change operations may have been carried out over a period of two decades (1970-1990), within the South African Defence Force (SADF). Internationally, homosexuality was declassified as a mental disorder in 1973. In contrast to the clear availability of information, and growing international understanding, regarding transsexuality, much of the ‘treatment’ carried out by the military during this period was “developed in complete ignorance of scientific literature ... considering the first sex change operation occurred in the 1950s and that there has been a flood of literature on the topic since then”.³¹⁷ Certainly, there were some who found solace in a diagnosis of transsexuality through the military medical establishment³¹⁸ but the majority of conscripts who experienced ‘treatment’ were homosexual. The attitude of the military medical fraternity “was simplistic, crude and stereotypical to an extreme: male homosexuals were perceived as effeminate and passive, inadequate males who wanted to be female; female homosexuals were the reverse – butch women who aspired to be male”.³¹⁹ *The Aversion Project* charged the South African medical establishment with colluding with the Apartheid government in torturing those considered to be non-normative during apartheid.

As Carla Tsampiras has noted, apartheid South Africa was marked by “the fervent reinforcing of heteronormativity”.³²⁰ Read alongside the seemingly sympathetic approach to sex change as a necessary relief to an “unfortunate position”,³²¹ the facilitation of access to surgery and post-operative documentation³²² and the military’s approach towards homosexuality provide some insight into the State’s perceptions of sexuality, gender and the body in the 1970s. Amanda Lock Swarr argues that the 1974 amendment of the *Births*,

³¹⁶ Kaplan, R. (2001). *Aversion Project – Psychiatric Abuses in the South African Defence Force During the Apartheid Era*. *South African Medical Journal*, 91(3), p. 216.

³¹⁷ *Ibid.*, p. 217.

³¹⁸ Here follows a description of being diagnosed in the military by one transsexual: “She found herself in an intense overt masculine world and was lost. She was at that time severely depressed and attempted to commit suicide. She was admitted to a military hospital. Whilst she was in the military hospital, the diagnosis of male to female transsexualism was made for the first time. For the first time she had a name for her bizarre condition and a realization that there was a recognizable journey traversed by other transsexuals culminating in a surgical procedure and finally living out her days as a normal woman”. Source: *Ehlers v Bohler Uddeholm Africa (Pty) Ltd* (2010) 31 ILJ 2383 (LC) S 3.

³¹⁹ Kaplan, R. (2001). *Aversion Project – Psychiatric Abuses in the South African Defence Force During the Apartheid Era*. *South African Medical Journal*, 91(3), p. 17.

³²⁰ Tsampiras, C. (2008). Not So “Gay” After All – Constructing (Homo)sexuality in AIDS Research in the South African Medical Journal, 1980-1990. *South African Historical Journal*, 60(3), p. 492.

³²¹ *Births, Marriages and Deaths Registration Amendment Bill Second Reading, Debates of the House of Assembly* (3 October 1974) p. 4446.

³²² According to Liesl Theron in an interview with Tamar Klein, documents including a new ID book and passport indicating the post-operative sex marker were made available almost immediately after leaving hospital. Source: Klein, T. (2009). *Intersex and Transgender Activism in South Africa*. *Liminalis*, 3, p. 29.

Deaths and Marriages Registration Act 51 shows a “close and mutually-substantiating relationship between the State and medical institutions, as legal recommendations followed the medical opinion of the 1970s”.³²³ She suggests further that the rigid and obsessively controlling nature of the Apartheid State, along with this collusion in codifying categories, may go some way to explaining the Act’s amendment.³²⁴ The events of the 1970s (including the continued experimentation at 1 Military Hospital, despite the international declassification of homosexuality as a disorder³²⁵) points to a perception on the part of the Apartheid state that the homosexual and the transsexual were in fact one and the same, with a singular caveat – the former was resistant to the ‘cure’ offered by state – sanctioned heterosexual realignment, or sex change surgery – and the latter was curable.

1980-1985: Media and Marriage

The decisions and debates regarding the legal status of transsexuals in the 1970s lead to a cross-pollination of information from academia, medico-legal understandings and news media in the public sphere: the most visible of these – by way of the sheer volume of media reports – pertained to the stances of largely religious groups on the subjects of sex change and post-operative marriage. One Prof S. A. Strauss, from the University of South Africa, was reported in a 1980 article in *Hoofstad* as addressing the *Pretoria Women’s Club for Medicine and the Law* on legal predicaments regarding transsexualism in South Africa.³²⁶ He noted that medicine was ahead of its time and that sex changes were very successful, giving those that wanted to live as women a gift of a new life. He added that some transsexuals could even be attractive and successful, but that the law would not recognise a marriage between a man and a post-operative transsexual woman.³²⁷ For Afrikaans religious organisations, such as the NG Kerk, which dominated the pages of several publications throughout the 1980s and into the early 1990s, this visibility and the right to marriage was not a question of law but rather a question regarding the unnaturalness of sex change.³²⁸ Religious groups turned to academic institutions to reinstate their opinion on the biological stability of sex.

³²³ Lock Swarr, A. (2012). *Sex in Transition*. New York: SUNY Press, p 60.

³²⁴ Ibid.

³²⁵ Homosexuality was declassified as mental disorder in 1973. See: Spitzer, R. L. (1981). The diagnostic status of homosexuality in DSM-III: a reformulation of the issues. *American Journal of Psychiatry*, 138(2), 210-215.

³²⁶ Wilson, E. (1985, June 22). The Twilight World of the Transsexual. *The Daily News*.

³²⁷ Ibid.

³²⁸ The issue of sex change continued to be a difficult point for the NG Kerk throughout the 1980s and into the 1990s: an article published in *Die Volksblad* in 1990 noted that the NG Kerk considered the operation taboo. The church also noted concern over what they perceived to be the rising number of operations taking place. Another article regarding the church’s feelings was published again at the end of 1990. Source: Geslagsoperasies Taboe, sê Kerk. (1990, April 12). *Die Volksblad*; Vir Die Nood Draai Die Sinode Dowe Oor. (1990, October 24). *Die Volksblad*.

Die Kerkbode, the religious newspaper of the NG Kerk, along with *Die Beeld*³²⁹ and *Die Vaderland*³³⁰, rejected outright both the ability to change sex and the possibility of marriage thereafter. *Die Volksblad*³³¹ and *Die Vaderland*³³² noted the opinion of several academics based at the University of the Free State stating that the marriage of individuals who had undergone sex change operations was unnatural. A similar article printed in *The Citizen*, entitled “The Problems of Same Sex Marriages”, quoted a corroborating opinion from a professor at the Department of Roman Dutch and International Law at the University of Pretoria.³³³ Furthermore, *Die Transvaaler*, without providing clear figures, suggested a worryingly drastic increase in the number of transsexuals in South Africa. Prof S. A. Strauss was quoted in this article, noting that while some doctors vehemently opposed sex change operations, others deemed them necessary for transsexuals to live happy, fulfilled lives.³³⁴

Strauss, in both instances, stands out as the singular voice to have advocated for a clear separation of the homosexual from the transsexual, based on notions of gender identity and sexual object choice. In *Die Transvaaler* he makes it abundantly clear that a homosexual was a person who was satisfied with their gender and their anatomy in relation to their desires towards the same sex, while a transsexual, on the other hand, was desperately unhappy with their body and their sex organs.³³⁵ Although the State may have, up until the late 1980s, facilitated sex change both medically and legally – ostensibly believing that it stood as a cure for homosexuality – within religious institutions, the sex of a body could not be adjusted. Post-operative transsexuals were still considered by these institutions to be of their birth assigned sex and, by extension, homosexual, as the afore-mentioned headline of *The Citizen* makes clear. This headline would not have been out of place in South Africa ten years later, as a discussion regarding gay marriage.

By the 1980s, internationally, the terms ‘transsexual’ and ‘transvestite’ had found wider usage outside both medical establishments and secret societies, particularly as support groups began to establish their presence more publicly.³³⁶ Sub culturally in South Africa, the Phoenix Society, possibly the first gender-focused organisation, was formed. Its members were largely white male-to-female cross-dressers. Charl Marais, in *Trans: Transgender Life Stories from South Africa*, describes himself as the only coloured member of the

³²⁹ Kerk-nee vir geslag verander. (1983, September 13). *Die Beeld*.

³³⁰ Brynard, K. (1983, September 13). Seksoperasie Afgekeur. *Die Vaderland*.

³³¹ Sulke Huwelike Onnatuurlik. (1984, February 3). *Die Volksblad*.

³³² Sulke Troues Onnatuurlik. (1984, February 6). *Die Vaderland*.

³³³ Problems of Same sex marriages. (1984, May 11). *The Citizen*.

³³⁴ Al Meer Geslagsveranderinge. (1984, August 20). *Die Transvaaler*.

³³⁵ Ibid.

³³⁶ Ekins, R., & King, D. (2004). *Rethinking “Who put the ‘Trans’ in Transgender?”*. Presented at The Eighth International Gender Dysphoria Conference, Manchester, England.

organisation and certainly the only transgender man.³³⁷ Phoenix was started after Marlene Knoetze joined the Beaumont Society through an advertisement in the South African magazine *Scope*,³³⁸ overjoyed at the thought of other “people like me in the world”.³³⁹ Beaumont informed her of another member in South Africa, and the two met and started Phoenix, placing their own advert in *Scope* and receiving several responses. The organisation communicated predominantly through their self-published magazine *FanFare*, appearing for the first time in 1984.³⁴⁰ They also extended their reach, making “contact with more and more clubs overseas”.³⁴¹ The organisation, much like its predecessors the Beaumont Society in the UK and FPE in the US, was a key element in the development of the discourse of transgender within the public sphere in South Africa.

FanFare, as the society’s official journal, was one of its central tools for communication and suggests language shifts and tensions between different sexual and gender identities in the 1980s. The journal had national distribution amongst its South African network and to some members in Namibia, Zimbabwe and as far afield as Malta.³⁴² It was also regularly distributed to other organisations overseas including Beaumont and FPE, in exchange for their publications. Quite soon after publishing *FanFare*, Phoenix began to appear in mainstream news media for the first time, leading to an unexpected inundation of new members.³⁴³ A recent member of the society stated in a letter printed in the November 1985 edition that they had “seen a couple of articles in the *Huisgenoot* and *Cosmopolitan* about men who like to dress as women ... it was through these articles that I heard of and contacted the Phoenix Society”.³⁴⁴ The Society itself believed that this “exposure in the

³³⁷ Morgan, R., Marias, C., & Wellbeloved, J. (Eds.), (2009). *Trans: Transgender Life Stories from South Africa* (pp. 27-35 – Charl’s Story: ‘Back in the 70s there was no support’). Auckland Park: Jacana Media.

³³⁸ “During the 1960s, 70s and 80s *Scope* magazine became a South African publishing icon. It challenged the censorship laws of the time with pin-up pictures of bikini-clad girls and star-covered breasts” Source: Froneman, J. (2011). The rise and demise of *Scope* magazine: A media-historical perspective. *Ecquid Novi African Journalism Studies*, 32(1), p. 49.

³³⁹ Morgan, R., Marias, C., & Wellbeloved, J. (Eds.), (2009). *Trans: Transgender Life Stories from South Africa* (p.58 – Marlene’s Story: ‘I felt lonely trying to be a man’). Auckland Park: Jacana Media.

³⁴⁰ Ibid.

³⁴¹ Ibid.

³⁴² *FanFare*. (19 November 1985). *FanFare*, Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Joy Wellbeloved Collection’ – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand.

³⁴³ *FanFare*. (18 September 1985). *FanFare*, Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Joy Wellbeloved Collection’ – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand. p. 1.

³⁴⁴ *FanFare*. (19 November 1985). *FanFare*, Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Joy Wellbeloved Collection’ – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand. p. 7

popular press” was necessary and would “help all transgender people everywhere”.³⁴⁵ Phoenix often derided the fact that South Africa was a “somewhat hidebound, macho-orientated, Calvinistic society”.³⁴⁶

‘Transgenderist’ was mentioned for the first time in *FanFare* in 1986, although this was within a cartoon³⁴⁷ which was possibly a reprint from one of the other affiliated organisations.³⁴⁸ Marlene believes that she and another member, Joy Wellbeloved, were the earliest users of the term transgender, deploying it in very much the same way Prince did: “we weren’t transvestites because we wanted more, but we weren’t transsexuals because we didn’t want the operation”.³⁴⁹ In the same year, the Society also started a publications company – Phoenix Publications. This was largely due to the growing bans on objectionable literature³⁵⁰ which made it far too difficult and costly to attain books and materials from overseas.³⁵¹ In the increasingly stifled climate of the 1980s, Phoenix also maintained a library system whereby books pertinent to gender issues³⁵² could be rented and sent via the postal service. The written work of Phoenix did not go unnoticed by international organisations which often reprinted their articles or, at the very least, wrote letters to them congratulating them on their output.³⁵³ The magazine also reprinted articles from both the US and the UK. This allowed for a far greater sub-cultural travel of ideas than ever before.

³⁴⁵ *FanFare*. (22 March 1988). *FanFare* (33), Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Joy Wellbeloved Collection’ – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand. p. 26

³⁴⁶ *Ibid*.

³⁴⁷ “‘Are you telling me this is what you looked like before you became a transgenderist?’” The cartoon isn’t directly attributed to any other organisation; however, given the lack of the term’s visibility within Phoenix at the time and the fact that they did reprint cartoons and articles from organisations who were using the term, it is highly likely this particular cartoon was sourced from another organisation.

³⁴⁸ *FanFare*. (24 September 1986). *FanFare*, Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Joy Wellbeloved Collection’ – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand. p. 18.

³⁴⁹ Morgan, R., Marias, C., & Wellbeloved, J. (Eds.), (2009). *Trans: Transgender Life Stories from South Africa* (p.57 – Marlene’s Story: ‘I felt lonely trying to be a man’). Auckland Park: Jacana Media.

³⁵⁰ At the time Benjamin’s *The Transsexual Phenomenon* appeared on the State’s list of objectionable literature from 1980s. Cape Town Archives Repository. *Objectionable Literature*. Harry Benjamin. *The Transsexual Phenom*. Vol. 3/83.

³⁵¹ *FanFare*. (22 May 1986). *FanFare*, Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Joy Wellbeloved Collection’ – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand. p. 20.

³⁵² The Library of the Phoenix distributed copies of April Ashley’s *Odyssey*, Morris’s *Conundrum* and *The Christine Jorgenson Story*: *FanFare*. (24 September 1986). *FanFare*, Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Joy Wellbeloved Collection’ – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand. p. 20.

³⁵³ “It gives me great pleasure to say that even overseas our sister organisations appreciate your efforts so much that one can hardly open an overseas magazine and not find one or more of *FanFare*’s articles reprinted”. Source: *FanFare*. (22 July 1986). *FanFare*, Gay and Lesbian Memory in Action Archives of South Africa (GALA).

1985-1990: Transgender

Throughout the 1980s, in large part due to this media visibility, Phoenix continued to see spikes in their membership. As one reader noted in 1986 after seeing an article about transvestites in the *Radio and TV Magazine*: “What a revelation for me!! Other people were like me and there was even a society for us”.³⁵⁴ An editorial following this letter pondered why so many of the Society’s members were “leaving the closet existence behind” and displaying “the courage to go public”.³⁵⁵ The answer, the editor suggested, lay in the increased “publicity” in news media.³⁵⁶ In 1987, Phoenix assisted the South African Broadcasting Corporation (SABC) to produce a documentary on transvestite and transgender people, assisted by Phoenix. Sadly, the documentary never aired: the editor suggested (perhaps in part due to Phoenix’s growing public media presence) “our moral protectors have found something ‘undesirable’ in the program”.³⁵⁷

By the late 1980s, Phoenix believed that there were clear signs that ‘transgenderism’ was becoming a serious topic in South Africa.³⁵⁸ Seizing what they saw as a possible political moment in 1988, *Phoenix Publications* produced its most original and overtly political text – *The Transgender Phenomenon*.³⁵⁹ The book was distributed not only to Phoenix members in South Africa but also to contacts, members and allies internationally. The introduction, written by a clinical psychologist, began by outlining that transsexualism was transgender’s “closest medical definition”, distinguished from it by the “explicit request of some individuals that medical professionals provide them with some means to physically change their sex”.³⁶⁰ The text makes a very clear distinction between sex, gender and sexuality. In a seemingly strange echoing of Afrikaner religious institutions, the book clarified Phoenix’s standpoint regarding to the medico-legal notion of transsexualism by stating that it was in

Available at ‘Joy Wellbeloved Collection’ – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand. p. 10.

³⁵⁴ *FanFare*. (January 1986). *FanFare* (36), Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Joy Wellbeloved Collection’ – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand. p. 14.

³⁵⁵ *Ibid.*, p. 16.

³⁵⁶ *Ibid.*

³⁵⁷ *FanFare*. (May 1987). *FanFare* (28), Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Joy Wellbeloved Collection’ – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand. p. 22.

³⁵⁸ *FanFare*. (September 1988). *FanFare* (36), Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Joy Wellbeloved Collection’ – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand. p. 21.

³⁵⁹ The Phoenix Society. (1988). *The Transgender Phenomenon: You and Your Dual Gender*. Phoenix Publications. Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Joy Wellbeloved Collection’ – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand.

³⁶⁰ *Ibid.*, p. 2

fact “impossible to change ... sex, in spite of what the Medical Profession may claim”.³⁶¹ As evidence, the book went to great lengths to discredit the bodies of post-operative transsexuals, placing their failure clearly in their inability to engage in heterosexual reproduction.

A sex change operation ... simply leaves him as a castrated male ... surgically the man has been provided with an orifice ... it isn't a real vagina. It is simply a tube ... serving no real purpose except to provide an orifice to receive a male penis during the act of intercourse ... the breasts of such a man/woman are often made of silicone, and as such are incapable of serving their natural purpose of breastfeeding a baby. It is also impossible for the sex-changed male to conceive a baby.³⁶²

Phoenix argued that it was in the search for help that the transgender person encountered “traditional medical dogma which, through ignorance, tries to convince him to quit, or else have a sex change. Neither of which are what he really needs or wants, because he is being offered a sexual solution for what is essentially a gender condition”.³⁶³ This person, they contended, may feel himself (to use the original pronoun of the publication) a freak as he tried to maintain his male sex (and by extension his heterosexuality) while wanting to be a woman *in gender*. Pointing to understanding of transsexuality at the core of State medico-legal perceptions, the book posited that the difference between a transgender person and a transsexual was that the ‘transgenderist’ “desires a gender change, as the name implies, and his sexual interests remain EXACTLY the same as any normal male’s. The Transsexual wants to have a sex change for purposes of sexual relations with men”.³⁶⁴

Key here is the notion of “any normal male”, suggesting that transgender men, though they may want to change gender, are – through maintaining a male sex – in fact heterosexually aligned, while transsexual men desire sex-changing surgery and to engage in sexual relations with men, in order to enact proper (yet inadequate) heterosexuality. This idea of the “normal male’s” inclinations being heterosexual also positions homosexuality as the site of the abnormal male, a site of failure. For Phoenix, homosexuals were those who clearly made a decision to be homosexuals because they could not overcome their fear of female domination. Let me be clear: *The Transgender Phenomenon* seems to suggest that it is the desire to have sexual relations with men that underpins the need for a sex change, rather than the desire to fulfil a specific gendered self. The book notes that the transgender person presents various legal difficulties and it is often these, along with the difficulties of gaining employment, that pressurise “the transgendered person into submitting against his better judgement, to the full sex change operation”.³⁶⁵ The book closes by noting that

³⁶¹ Ibid., p. 4.

³⁶² Ibid.

³⁶³ Ibid., p. 14.

³⁶⁴ Ibid., p. 16.

³⁶⁵ Ibid., p. 20.

‘transgenderists’ desire acknowledgment, the right to gainful employment, the freedom to live their lives “with our wives and families”, and the right to be human.³⁶⁶

Transsexuality, then, for both the Apartheid State and the Phoenix Society³⁶⁷ was a means through which to realign sexual orientation, a true crossing or transing of sexuality away from the moral threat and failure of homosexuality towards heterosexuality, rather than a medical means through which to facilitate desired gender embodiment. However, unlike the State: Phoenix, certain academics, and wider religious institutions considered the post-operative person as something other than heterosexual (due to their lack of procreative capabilities) and closer to a homosexual, but not quite – a transsexual. Phoenix certainly saw transgender as an umbrella term, noting, “as a subculture we have been fragmented by all the labels that we have allowed to be fixed on one or another facets of our condition. At long last, it has taken time, one word is becoming [sic] to be accepted and, even more important, to be understood, to describe our overall situation ... ‘TRANSGENDER’.”³⁶⁸

Entering into the 1990s: The Split

Clearly the legality and morality of sex change was something of a festering issue within the public sphere throughout 1980s. Alongside this, the growing visibility of individuals who did not want surgical intervention was certainly becoming an issue. The challenges from both academia and one of the largest religious supporters regarding the nature and legal standing of the post-operative transsexual body could no longer be ignored. In 1984, it was reported that the South African Law Commission would be undertaking the task of examining the legal consequences of sex change operations.³⁶⁹ By 1985, *The Daily News* reported that more than 300 South Africans had undergone sex change operations and that many of those who had had reassignment were struggling to adjust psychologically.³⁷⁰ Due to this, the Medical Association of South Africa called for an investigation into “all facets of this operation and for definite guidelines to be set down”.³⁷¹ The Urological Association of

³⁶⁶ Ibid., p. 21.

³⁶⁷ As a member of the Phoenix noted in a more recent interview: “In those days, even in the Phoenix Society, if you went as far as to have a sex change, there was a feeling that it was because there was maybe something wrong with you and you couldn’t put up with the pressure” – van der Merwe, M. (2015, July 21). *Transgender in Focus: Past, Present, Future*. Retrieved August 25, 2015, from <http://www.dailymaverick.co.za/article/2015-07-21-transgender-in-focus-past-present-future/>

³⁶⁸ *FanFare*. (April 1992). *FanFare* (55), Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Joy Wellbeloved Collection’ – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand. p. 27.

³⁶⁹ SAPA. (1984, March 15). Commission probes sex change law snags. *The Citizen*.

³⁷⁰ Wilson, E. (1985, June 22). The Twilight World of the Transsexual. *The Daily News*.

³⁷¹ Ibid.

South Africa, along with the Society of Obstetricians and Gynaecologists, and the Association of Plastic and Reconstructive Surgeons, were to investigate and submit recommendations to the Minister of Health and Welfare.³⁷²

In its 1986 annual report to then Minister of Justice Kobie Coetzee, the Commission highlighted that they had appointed Professor J. Taitz to investigate the matter and that he had undertaken a trip to Britain in order to do so.³⁷³ In 1987, Taitz published an article in the *UCT News* criticising sex change operations for creating what he termed a “Pygmalion ... hovering between the neurotic and the psychotic, neither man nor woman and unable to identify with one gender or the other”.³⁷⁴ It is through the work of Taitz that two interesting shifts began to happen during the 1980s. First, as a legal voice and an academic in 1980s South Africa writing about transsexualism, Taitz explicitly begins to make clear the separation between the homosexual and the transsexual.³⁷⁵ Second, within this separation, Taitz refers to transsexuals as “suffering from gender dysphoria syndrome”,³⁷⁶ explicitly using the word ‘gender’.³⁷⁷ Moreover, although he differentiated homosexuality from transsexuality, Taitz was of the opinion that Parliament, by acknowledging post-operative sex, might have “impliedly amended the common law by providing legislative recognition for all juristic purposes”.

In a surprising turn of events in South Africa in 1992, at the “inception of the transition from Apartheid to democracy”,³⁷⁸ the *Births, Marriages and Deaths Registration Act* was repealed. Lock Swarr points out that the reason for the repeal was not directly related to sex reassignment but rather a move to streamline registration processes.³⁷⁹ The Minister of Home Affairs noted that the Act’s successor, the *Births and Deaths Registration Bill*,³⁸⁰ followed the precedent that had been set down in *W v W*: the legal possibility of transsexuality was rejected³⁸¹ noting that “A person’s sex cannot be altered medically ... a sex-change operation brings only psychological relief and that a person’s sex is not

³⁷² Ibid.

³⁷³ Commission Studying Change of Sex Law. (1986, March 26). *The Citizen*.

³⁷⁴ Sex Change Operations Causing Legal Problems. (1987, September 3). *The Citizen*.

³⁷⁵ “Transsexuals are not the same as homosexuals, who know or believe themselves to be of the same sex as the persons to whom they are attracted. Transsexuals, on the other hand, although attracted by members of their own biological sex, regard them as being of the opposite sex” – Taitz, J. (1988). The Legal Determination of the Sexual Identity of a Post-Operative Transsexual Seen as a Human Rights Issue. *Medicine and Law*, 7, p. 468.

³⁷⁶ Taitz, J. (1988). The Legal Determination of the Sexual Identity of a Post-Operative Transsexual Seen as a Human Rights Issue. *Medicine and Law*, 7, p. 467.

³⁷⁷ Taitz, J. (1980). The Legal Consequences of A Sex Change – A Judicial Dilemma. *South African Law Journal*, 97.

³⁷⁸ Lock Swarr, A. (2012). *Sex in Transition*. New York: SUNY Press, p. 62.

³⁷⁹ Ibid.

³⁸⁰ This would become the *Births and Deaths Registration Act*, no. 51 of 1992.

³⁸¹ Lock Swarr, A. (2012). *Sex in Transition*. New York: SUNY Press, p. 62.

fundamentally changed by way of surgery”.³⁸² Much like during the 1970s, there was very little discussion over the change; in fact, members largely celebrated the new Bill as being generally more “sophisticated”³⁸³ and moving with the shifts of a rapidly changing world. Not a single member asked about the removal of the ability to change sex. It is interesting then that the Minister chose to return to the subject before taking his seat, presenting a strange “word of warning” and showing a clear disdain for the ostensibly backward and unsophisticated Apartheid practice:

To those hon members who have nevertheless considered undergoing a sex change operation ... the good old days when a man could become a woman after a sex change operation, and a woman a man, no longer exist as a result of court judgements in that regard ... one cannot simply cut out, cut off or attach more organs and then expect ... to be able to assume a different sex.³⁸⁴

The stark contrast between the introduction and discussion of the 1974 Bill and the 1992 Bill is telling. In an era wherein it was believed that homosexuality was a distinct threat to the moral standing of Apartheid South Africa, it was accepted that a person’s body could be realigned with their gender, thus reinstating heterosexual desire. In this transitional period towards the new South Africa where homosexuality would eventually become constitutionally protected, the political organising for which had already begun, there was no longer a need to perceive a static, heterosexually-focused gender at play in the wrong body. Rather, the body fell away as something malleable. Lock Swarr argues that this was a fundamental moment, in what can be described as a medico-legal split, indicating clear “differences between medical and legal understandings of gender as alterable or inalterable”.³⁸⁵ Moreover, the suggestion that the “good old days” were “over” is a clear assertion that sex change was an eccentricity of apartheid.³⁸⁶ Nowhere is the Apartheid State’s understanding of sex change operations and their outcomes more clear than in the release – in 1994, after some ten years – of the Commission’s report on the matter entitled *Investigation into the Legal Consequences of Sexual Realignment and Related Matters*.³⁸⁷ Providing clear evidence that the Minister’s decision did not take place within a vacuum, its very name and that of the proposed Bill that would eventually transpire from it – *the Realignment of Sexual Orientation Bill* – underscore the Apartheid perception that sex

³⁸² Minister of Home Affairs. Births and Deaths Registration Bill (Second Reading of Debate), Debates of the House of Assembly (19 March 1992), p. 2354.

³⁸³ Ibid., p. 2347.

³⁸⁴ Ibid., p. 2356.

³⁸⁵ Lock Swarr, A. (2012). *Sex in Transition*. New York: SUNY Press, p. 63.

³⁸⁶ Ibid., p. 65.

³⁸⁷ South African Law Commission. (1994). *Investigation Into the Legal Consequences of Sexual Realignment and Related Matters (Report)*. Pretoria: South African Law Commission.

change had been about reconstructing or realigning sexuality and curtailing transgender phenomena.³⁸⁸

Conclusion

South Africa's particular medico-legal history, in part due to its sustained ties "with Britain and its medical traditions and norms"³⁸⁹ lead to the development of the field of sexology alongside, and often indiscernibly from, the field of eugenics. Chauncey notes that medical theories achieve greater acceptance and influence "because they reflected a much broader cultural uneasiness with and antipathy to these challenges".³⁹⁰ Certainly the early 1900s in South Africa, as visible in the SAMJ, were animated by the challenges of racial mixing, the fear over the perceived 'watering down' of the white race alongside a growing concern over deviant immigrants escaping the colonial metropole. When eugenics fell out of favour internationally, sexology was able to establish its own space within South Africa; this coincided with the emergence of Apartheid and a growing fear over the homosexual as an entity that undermined the vision and authority of the gender-normative Afrikaner State. As sexology shifted base from Europe to the US, greater understandings developed in relation to the difference between gender, sex and sexuality. It is at this point that South Africa began to develop a very particular notion of medical intervention in relation to non-normative/transgressive bodies, regardless of whether this non-normativity was due to sexuality, gender, or a combination of the two. As Dubow adds, colonial societies would have looked to their ex-colonial powers or metropolitan sciences to validate their ideas, although "the ideologies they developed were seldom merely derivative".³⁹¹

Alongside this, a history of parliamentary discussions, legislation and military-based sex change operations suggest a contested belief held in some quarters that transsexuality, as it emerged out of the category of inversion, was simply the true identity of the homosexual who could, through sex change, be cured and reintroduced into society as a gender-normative, heterosexually-inclined individual. However, this would soon be challenged by

³⁸⁸ In the 1997 Annual Report, the South African Law Commission noted that 'Project 52 – Investigation into the legal consequences of sexual realignment and related matters' was under consideration by the Department of Justice. Source: South African Law Commission. (1997). *South African Law Commission Twenty-Fifth Annual Report – 25 Years of Law Reform (Report)*. Pretoria: South African Law Commission.

³⁸⁹ Ncayiyana, D. J. (2004). A Window Into the Origins of the South African Medical Profession. *South African Medical Journal*, 94(10), p. 787.

³⁹⁰ Chauncey, G. (1983). From Sexual Inversion To Homosexuality: Medicine and the Changing Conceptualization of Female Deviance. *Salmagundi*, 58/59(Fall 1982-Winter 1983), p 116.

³⁹¹ Dubow, S. (2010). South Africa: Paradoxes in the Place of Race. In A. Bashford & P. Levine (Eds.), *The Oxford Handbook of The History of Eugenics*. Oxford University Press, p 285.

major religious organisations. Law records, along with newspaper articles and first-hand accounts suggest that it was often those who dressed in the clothing of the opposite sex – those who ‘masqueraded’ – but did not desire the State to intervene in order to surgically change their sex, that were at the forefront of police harassment. Meyerowitz argues that these types of history are incomplete without considering the visibility of transgender phenomena in popular culture, because they rest too much power with medico-legal relationships and definitions.³⁹² As this chapter has argued, since at least the 1950s transgender phenomena began to find some articulation or reflection within mass media. These portrayals may not always have been particularly flattering, but they did provide some form of visibility. Meyerowitz adds that popular cultural images, like the scandalous stories of ‘sex change’ or ‘man turns into woman’, presented in magazines like *Scope* and *Drum*, or the coverage and exposure of individuals ‘masquerading as women’, have often presented the first cultural forms which “marginalized subjects ... use ... to construct and reconfigure their own identities”.³⁹³

The development and subsequent dissolution of this medico-legal relationship presents a particular contextual understanding of sex, gender and sexuality within South Africa. When transgender, as a term, did emerge in the late 1980s, it was initially in the publication of one of the first gender-focused organisations: the Phoenix Society. Their use of the term was as a counter-point to the State’s role as medico-legal gatekeeper, referring to the inability of “ignorant doctors” to tell the difference between “gender role conflict, and their sexually orientated solution”.³⁹⁴ This “sexually orientated solution” is a key element of the long history of the emergence of transgender phenomena. The travel of knowledge and language regarding transgender phenomena has not been unidirectional: cross-pollination between global and local, the public sphere, medico-legal and academic understandings has played a critical role. These various roots/routes and attachments represent a unique history in relation to the understandings and treatment of gender, sex and sexuality, in relation to perceptions of the transgressive body. It is this peculiarity of circumstances and understandings that has facilitated the emergence of transgender in a way unique to South Africa.

³⁹² Meyerowitz, J. (1998). Sex Change and the Popular Press: Historical Notes on Transsexuality in the United States, 1930-1955. *GLQ: A Journal of Gay and Lesbian Studies*, 4(2), p. 178.

³⁹³ Ibid., p. 160.

³⁹⁴ The Phoenix Society. (1988). *The Transgender Phenomenon: You and Your Dual Gender*. Phoenix Publications, p. 17.

Chapter Two: The Politics and Limits of Transgender in South Africa

One of the critical elements of the negotiations to end Apartheid in South Africa was the creation of a new Constitution for the country. Arguably one of the more controversial introductions of the Interim Constitution of 1993, which garnered widespread international coverage, was its Bill of Rights.³⁹⁵ The inclusion of protection from discrimination on the grounds of sexual orientation, sex, and gender within the proposed Equality Clause was particularly controversial. While the *Births, Marriages and Deaths Registration Act 51 of 1992* was being repealed, a burgeoning 'gay rights' movement – lead by the National Coalition for Gay and Lesbian Equality (NCGLE) – had begun to show real political promise. Across the African continent, much like during apartheid, several countries responded to South Africa's legislative inclusion of sexual orientation, sex and gender as an opportunity to establish their sovereignty, independence and critically their moral superiority. This controversy over what was widely touted as the inclusion of 'gay rights' in the South African Constitution became one of the most effective means of publicizing these new rights beyond the country's borders. Within the international arena, the shift towards framing gay and lesbian rights – or LGBT rights – as human rights was gaining traction, and the Clause, given its uniqueness, held particular importance in this regard.

These developments of constitutional democracy in the early 1990s heralded in remarkable new possibilities for South Africa, not least of which, as this chapter will argue, was the evolution of transgender from a discourse into a viable politics. This chapter picks up from where the last left off: it tracks the journeying and shifting of the term 'transgender' as it enters into wider circulation and comes into contact with notions and options of asylum. It also unpacks the conditions that have allowed for this movement. In doing so, this chapter seeks to answer how transgender functions within South Africa, how it is deployed, and what power and meaning it holds in relation to asylum. We begin by unpacking the meanings and implications of gender, sex, and sexuality within the Equality Clause as a key constitutive element of both The South African Refugees Act, no. 130 of 1998 and The Alteration of Sex Description and Sex Status, no. 49 of 2003. Together these three legislative instruments mark out the foundational possibilities of life in South Africa for transgender asylum seekers. This chapter argues that it is the presence of the term 'transgender', though lacking in substance, within the early language of the LGBT rights movement in South Africa, that facilitated its initial circulation. Furthermore, that the political development of transgender, as with its emergence as a discourse, has been deeply tied to these legal-constitutional developments.

³⁹⁵ *Interim Constitution of the Republic of South Africa*, Act no. 200 of 1993.

Part of the aim of this chapter is to understand the meaning-making of transgender in relation to asylum in South Africa. David Valentine notes in considering transgender that “while every word we speak is a category, some have more power to explain who we are, and thus to limit (as much as enable) the possibilities for our action in the world”.³⁹⁶ This chapter argues that transgender has come to hold a certain currency for transnational, regional and local South African organisations, most notably in relation to ‘universalised’ principles of LGBT human rights. Drawing on the story of Malawian Tiwonge Chimbalanga, a high-profile gender refugee who moved to South Africa with the assistance of transnational organisations, after her widely-publicised marriage to Steven Mojenja in 2009, this chapter also explores the limits of transgender. Chimbalanga’s story presents, I argue, a moment “out of joint”.³⁹⁷ She brings us to the point within which Dipesh Chakrabarty would suggest we are required to acknowledge “cracks in the structure of homogeneity”³⁹⁸ to read transgender’s finitude. Her story, I suggest, provides a moment in which it becomes possible to question the limits and utility of the growing universalisation of the term ‘transgender’ in relation to specific lived experiences of gender refugees as they relate to seeking asylum in South Africa. In essence, if transgender transforms as it travels, taking on meaning in relation to bodies, national homes, institutional frameworks and imaginaries, this chapter asks what it might mean for a person to be seen as transgender, to be presumed to be transgender, but to never take on that term themselves, and what that reveals about the theoretically radical potential of South Africa’s legal-constitutional make up.

South Africa’s Constitutional Development

Promulgated on the 18th of December 1996 as part of the Constitution of the Republic of South Africa, the Equality Clause states:

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

³⁹⁶ Valentine, D. (2007). *Imagining Transgender: An Ethnography of a Category*. London: Duke University Press, p. 233.

³⁹⁷ Chakrabarty, D. (2000). *Provincializing Europe: Postcolonial Thought and Historical Difference*. Princeton University Press, p. 113.

³⁹⁸ *Ibid.*, p. 90.

The Equality Clause's appearance in the interim Constitution and its eventual inclusion in the new Constitution were not only controversial but in many ways exceptional, given the wider lack of both favourable international precedent, and a visible, cohesive, lobbying force within South Africa, initially.³⁹⁹ Neville Hoad suggests that this relational link between the international circulation of LGBT human rights at the time and South Africa's specific constitutional developments was in fact crucial to the Clause's development. He argues that in the drafting of the Constitution,

A self-conscious attempt was made to learn from the failures of prior liberation movements across the globe. Given the illegitimacy of the old regime and the imperative to incorporate the most recent or "advanced" form of human rights, the timing of the South African constitution in the history of postcolonialism facilitated the entrenchment of lesbian and gay human rights.⁴⁰⁰

The provision prohibiting discrimination on the grounds of sexual orientation provided the basis for several important cases in the first years of democracy. Key amongst a series of rulings in the 1990s was *The National Coalition for Gay and Lesbian Equality vs Minister of Justice and Others* (1998), which declared the criminalisation of sodomy unconstitutional while also providing the grounds for recognising myriad other rights for 'sexual minorities' in South Africa.⁴⁰¹ Edwin Cameron's 1993 article *Sexual orientation and the Constitution: a Test Case for Human Rights* (1993) was highly influential in both the majority and minority judgements of the case. In his paper, Cameron makes it clear that "homosexual identity as a political fact is a recent phenomenon and one whose social roots are the subject of deep controversy".⁴⁰² People who have been attracted to the same sex have always existed, but those who would recognise themselves as 'gay' or 'lesbian' – an identity connected to this – are a far more recent event. He argues, though, that the law has been

less concerned with homosexual identity than with homosexual conduct. But social discrimination at large occurs principally on the basis of what people perceive as categories of sexual orientation. In other words, men and women are discriminated against not only because they perform sexual acts with others of their own gender, or because they accept for themselves the labels 'gay' or 'lesbian', but because they are perceived as likely or disposed to perform homosexual acts - *even if in fact they never do*" [emphasis added].⁴⁰³

³⁹⁹ Christiansen, E. (2000). Ending the Apartheid of the Closet: Sexual Orientation in the South African Constitutional Process. *New York University Journal of International Law and Politics*, 32 (4): 997-1058.

⁴⁰⁰ Hoad, N. (1999). Between the White Man's Burden and the White Man's Disease: Tracking Lesbian and Gay Human Rights in Southern Africa. *GLQ: A Journal of Gay and Lesbian Studies*, 5(4), p. 575-576.

⁴⁰¹ de Vos, P. (2009). From Heteronormativity to Full Sexual Citizenship? Equality and Sexual Freedom in Laurie Ackermann's Constitutional Jurisprudence. In J. Barnard, D. Cornell, & F. du Bois (Eds.), *Dignity, Freedom and the Post-Apartheid Legal Order The Critical Jurisprudence of Laurie Ackerman*. Cape Town: Juta.

⁴⁰² Cameron, E. (1993). Sexual orientation and the constitution: a test case for human rights'. *South African Law Journal*, 110, p. 452.

⁴⁰³ *Ibid.*, p. 452.

Cameron acknowledged that discrimination, in a number of cases, is based on the perception of homosexuality, as opposed to the actual practice of homosexuality. Thus, he pointed out strongly that there was a need for general protection, as opposed to simple decriminalisation. In arguing that adequate protection for sexual orientation within the Constitution would entail the right to freedom of speech, association and conduct, he notes that this would also include the freedom to “cross-dress (that is, appear in drag)” – a reflection on the case of *S v Kola*.⁴⁰⁴ Following from this, the majority judgment of Justice Ackerman gave a broad reading of sexual orientation:

The concept “sexual orientation” as used in Section 9(3) of the 1996 Constitution must be given a generous interpretation of which it is linguistically and textually fully capable of bearing. It applies equally to the orientation of persons who are bi-sexual, or transsexual, and it also applies to the orientation of persons who might on a single occasion only be erotically attracted to a member of their own sex.⁴⁰⁵

This ‘generous interpretation’ meant that sexual orientation, as envisioned in the Bill of Rights, extended to prohibiting discrimination against transsexual people. The judgement did more than just recognise transsexuality; it provided a space for the varying ways that individuals come to identify themselves using a mixture of signifiers and language. It acknowledged that while the *language* is contingent, the experience the language attempts to name or describe is not,⁴⁰⁶ ostensibly providing for the future possibility of transgender. The concurring judgement by Justice Sachs stated:

Only in the most technical sense is this a case about who may penetrate whom where. At a practical and symbolic level it is about status, moral citizenship and sense of self-worth of a significant section of the community. At a more general and conceptual level, it concerns the nature of the open, democratic and pluralistic society contemplated by the Constitution.⁴⁰⁷

This is not to say that a reading of transgender, within the Constitution, outside the bounds of sexual orientation is not possible. Along with ‘sexual orientation’, the use of the words ‘sex’ and ‘gender’ within the Bill of Rights was very particular, as Janet Kentridge (1998) explains in *Constitutional Law of South Africa*. Based largely on an understanding drawn from feminist literature, sex refers to biological characteristics while gender refers to social characteristics – which often derive their meaning from being attributed to a particular biological sex. Gender, as utilised in the Bill then, is “a psychological and cultural”

⁴⁰⁴ Ibid., p. 471.

⁴⁰⁵ *National Coalition for Gay and Lesbian Equality v The Minister of Justice* 1998 (12) BCLR 1517 (CC) at para 21.

⁴⁰⁶ See: de Vos, P. (2009). From Heteronormativity to Full Sexual Citizenship? Equality and Sexual Freedom in Laurie Ackermann's Constitutional Jurisprudence. In J. Barnard, D. Cornell, & F. du Bois (Eds.), *Dignity, Freedom and the Post-Apartheid Legal Order The Critical Jurisprudence of Laurie Ackerman*. Cape Town: Juta.

⁴⁰⁷ *National Coalition for Gay and Lesbian Equality v The Minister of Justice* 1998 (12) BCLR 1517 (CC) at para 107.

notion: accordingly, “we might say that a person is female or male according to her or his sex, but man or woman according to his or her gender”.⁴⁰⁸ In arguing for the need to include both sex and gender in the new Constitution, Denise Meyerson states, “The whole point of using the word 'gender' is to express the belief that sex does not determine gender, and that point cannot be made unless different meanings attach to the words 'sex' and 'gender'”.⁴⁰⁹ Kentridge adds that both sex and gender were included in the Bill so as to ensure the greatest possible protection.⁴¹⁰ This understanding would suggest that a possible constitutional reading of transgender as a protected element of sex or gender within the Equality Clause is entirely possible, given the theoretical acknowledgment that sex and gender are separate and that the “one does not determine the other”.⁴¹¹ Notably though, at the time of these discussions, ‘transgender’ did not as yet hold any political impetus, meaning or indeed visibility, even though it was in circulation to some degree in the Global North, and certainly part of a sub-cultural discourse within South Africa, as noted in the previous chapter.

Putting the T in NCGLE

These swift advances in the first years of democracy, with regards to legal challenges and the provisions of the new Constitution, lulled many into a false sense of security. Phoenix Society, post the publishing of *The Transgender Phenomenon*, entered into the 1990s, with calls by readers to vote for Parties most receptive to their cause:

There is a new constitution in South Africa and now that the Blacks have voting rights, the once all powerful National Party with its heavily Calvinistic language, is now just another minority party ... now is the time ... in the country to stand out and offer ... united support to whichever Party is prepared to remove our present chains.⁴¹²

⁴⁰⁸ Kentridge, J. (1998). Equality. In J. Kentridge, M. Chaskalson, S. Woolman, J. Klaaren, D. Spitz, & G. Marcus (Eds.), *Constitutional Law of South Africa*. Landsdowne: Juta, p. 14-26.

⁴⁰⁹ Meyerson, D. (1993). Sex and Gender in the South African Law Commission's Proposed Bill of Rights, The ANC's Draft Bill of Rights, and the Governments Proposal on a Charter of Fundamental Rights. *South African Journal on Human Rights*, 9(2), p. 295.

⁴¹⁰ Kentridge, J. (1998). Equality. In J. Kentridge, M. Chaskalson, S. Woolman, J. Klaaren, D. Spitz, & G. Marcus (Eds.), *Constitutional Law of South Africa*. Landsdowne: Juta p. 14-26D

⁴¹¹ Meyerson, D. (1993). Sex and Gender in the South African Law Commission's Proposed Bill of Rights, The ANC's Draft Bill of Rights, and the Governments Proposal on a Charter of Fundamental Rights. *South African Journal on Human Rights*, 9(2), p. 295.

⁴¹² *FanFare*. (February 1997). *FanFare* (Fall Edition), Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at 'Joy Wellbeloved Collection' – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand. p. 26-27.

Unlike the NCGLE, Phoenix, for its part, never actually engaged with the post-apartheid South African political landscape at any meaningful level.⁴¹³ This lack of engagement was in part due to their own inherent class and race privilege, embedded in the very white middle class foundation of the Society, as noted in the previous chapter. Along with this lack of political inclination, the historical use of ‘sex change’ surgery by the Apartheid state, as a means to cure homosexuality during the 1970s and 1980s, positioned them as possible colluders in a system that had been inherently oppressive to gay and lesbian people. This will be expanded on further on in this chapter. This positioning as possible colluders hampered their ability to connect to the emergent gay rights movement represented by the NCGLE. Moreover, State-sponsored reassignment exacted a political price for the organisation. Those who did transition during the 1980s were told to break ties with family and friends and start a new heterosexual life. Tamar Klein has called this an “historically delayed opportunity” to establish networks, build interest groups with similar individuals and build a movement to enhance rights.⁴¹⁴ The requirement was to disappear, making the transition from transsexuality to a more transgressive politics of transgender nearly impossible.

Incongruously, given these political shifts regarding the relative disappearance of any sort of trans visibility, by 1997 The NCGLE was celebrating an “equality clause unique in the world and in legal history ... achieved not without sacrifices by many lesbian, gay, bisexual and *transgender people*”.⁴¹⁵ Evidently the movement for sexual rights in South Africa utilised the term ‘transgender’, but it was unclear to what end and who this was meant to represent. The lack of a visible transgender constituency begs two interrelated questions: first, how did this term come to form part of the language utilised by the Coalition? Second, considering South Africa’s muddled political history with regards to trans issues and the Apartheid government, why would the Coalition use the term ‘transgender’ at all? Transgender’s variegated appearance can be explained by the changing international environment in relation to human rights, and the climate in which transnational organisations in the Global North found themselves regarding the demands of a growing transgender constituency.

⁴¹³ By the mid 1990s it had come to see itself as a ‘social’ organisation that was open to all “transpeople whatever their race, politics, religion, colour, sexual orientation or nationality ... Actively trying to change attitudes in South Africa” see: Yolandi. (1996). *Yolandi’s South African TV/CD/TS/TG Directory*. Retrieved December 6, 2014, from <http://www.oocities.org/southbeach/6006/rsa.htm>

⁴¹⁴ Klein, T. (2009). Intersex and Transgender Activism in South Africa. *Liminalis*, 3, p. 38.

⁴¹⁵ NCGLE. (1997). *The National Coalition for Gay and Lesbian Equality: Draft Annual Report January 1996 – February 1997*. NCGLE Collection, AM 2615, Gay and Lesbian Memory in Action Archives of South Africa (GALA), Johannesburg, William Cullen Library, University of the Witwatersrand.

In the US, the original ad hoc ‘gay rights’ organisations of the 1970s slowly became increasingly professionalised, non-profit structures in the 1980s.⁴¹⁶ Many of those who had originally been the vanguards of these movements – most notably poor, black, gender non-conforming, and transgender activists – found themselves increasingly marginalised by this emergent gay rights movement. Leadership was dominated largely by white, cisgendered gay and lesbian professionals while transgender people were at best “a politically embarrassing subgroup”.⁴¹⁷ As the gay rights movement became the ‘gay and lesbian rights movement’, the critique that these organisations continued to reflect the needs and experiences of an elite few remained ever-present.⁴¹⁸ Alongside this dominance of normative gender expressions and identity, a shift towards framing gay and lesbian rights as human rights was also gaining traction globally. This turn toward a discourse of human rights established a key platform through which to conduct professional international political lobbying, opening doors to powerful international organisations such as the UN. Lesbian and gay organisations based in the Global North increasingly defined and postured themselves as global, seeking to organise and create ties transnationally, and incorporating a far more centralised discourse of human rights.

Beginning in the early 1990s, transgender groups began to demand greater inclusion and acknowledgement within lesbian and gay organisations; this occurred initially in the US but eventually more widely. This was met with some resistance, particularly from groups concerned with the possibility that inclusion would only create greater division and confusion regarding the substance of sexual minority rights, especially within this move towards human rights.⁴¹⁹ This emergence was intimately connected to a critique of binary gender and prescriptions of normative gender.⁴²⁰ For David Valentine, the earliest example of this critique – and arguably the groundwork for what would become the initial

⁴¹⁶ Spade, D., & Mananzala, R. (2008). The Nonprofit Industrial Complex and Trans Resistance. *Sexuality Research and Social Policy*, 5(1), p. 57.

⁴¹⁷ Frye, P. R. (2000). Facing Discrimination, Organizing for Freedom: The Transgender Community. In J. D’Emilio, W. B. Turner, & U. Raid (Eds.), *Creating Change Public Policy, And Civil Rights*. New York: St. Martin’s Press, p. 461.

⁴¹⁸ Spade, D., & Mananzala, R. (2008). The Nonprofit Industrial Complex and Trans Resistance. *Sexuality Research and Social Policy*, 5(1), p. 60.

⁴¹⁹ Holly Boswell, in her seminal article *The Transgender Alternative* suggested that transgender had the power to be a political and transgressive tool for a kind of culture revolution. See: Boswell, H. (1991). The Transgender Alternative. *Chrysalis Quarterly*, 1(2), p. 30.

⁴²⁰ “The lack of visibility in, and at times active exclusion from, the leadership and politics of mainstream gay and lesbian organisations forced the emergence of a model of transgender identity and politics that saw sexual orientation and gender identity or expression as separate aspects of identity and that identified the need for a specific political framework to address discrimination and oppression experienced by people who violate gender norms and express gender characteristics”. Source: Spade, D., & Currah, P. (2008). Introduction to Special Issue – The State We’re in: Locations of Coercion and Resistance in Trans Policy, Part 2. *Sexuality Research Social Policy*, 5(1), p. 1.

transgender political movement – was Leslie Feinberg’s groundbreaking 1992 publication, *Transgender Liberation*.⁴²¹ The pamphlet gave a particular historical reading of the existence of transgender individuals throughout the world, including several African countries.⁴²² South Africa, though addressing major internal political shifts, was not completely cut off from these international debates. In 1991 JoAnne Roberts⁴²³ produced a *Bill of Gender Rights*, which articulated, possibly for the first time, basic human rights for transgender people. Addressed to ‘All Transgender Support Groups’, it was published by several organisations internationally, including Phoenix.⁴²⁴ The push for this inclusion meant that many former LG(B) organisations began adding the T into their names, mission statements and mandates, generating a shift in rights rhetoric from LG(B) rights to LGBT rights.⁴²⁵ According to some critics, the adding of the ‘T’ brought little to no substantive political change. This additive approach made transgender “ubiquitous in progressive community-based organisations, identity-based political movements, popular media accounts ... [and] ... international human rights discourses”.⁴²⁶ Arguably this presence within international human rights discourse was a key influence on the uptake of transgender as an element of ‘LGBT’ outside of the US.

Joseph Massad has been particularly acerbic about this specific circulation of human rights, transnational lobbying and donor-capital, arguing that the emergence of this transnationalism marked “the new aggressive universalisation campaign” for LGBT rights.⁴²⁷ South Africa, in the early 1990s, was considered by much of this movement to be the next crucial site for the further development of international LGBT human rights. Ostensibly, the framing utilised by the NCGLE, along with the advent of the Equality Clause and the almost certain impact this would have on human rights internationally, “enabled the Coalition to

⁴²¹ Feinberg, L. (1992). *Transgender Liberation: A Movement Whose Time Has Come*. New York: World View Forum, p. 6.

⁴²² Ibid.

⁴²³ JoAnn Roberts was an early trans political activist and the founder of the Renaissance Transgender Association in Pennsylvania, USA. The Bill was a hallmark of early trans advocacy and organisations. It would go on to be expanded into the International Bill of Gender Rights in 1993, and is remembered as a “remarkable declaration of our wholeness and worthiness at a time when many of us were mired in shame”. Source: Denny, D. (2013). *Remembering JoAnn (With Digression)*. Retrieved July 28, 2016, from <http://dallasdenny.com/Chrysalis/2013/06/08/remembering-joanne-roberts/>; Bolich, G. G. (2008). *Today's Transgender Realities: Crossdressing in Context*, Vol. 2. Psyche Press

⁴²⁴ FanFare. (July 1991). *FanFare* (52), Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Joy Wellbeloved Collection’ – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand.

⁴²⁵ Stryker, S. (2008). *Transgender History*. Berkley: Seal Press, p. 136.

⁴²⁶ Valentine, D. (2007). *Imagining Transgender: An Ethnography of a Category*. Durham: Duke University, p. 33.

⁴²⁷ Massad, J. A. (2002). Re-Orienting Desire: The Gay International and the Arab World. *Public Culture*, 14(2), p. 363.

raise sufficient funds to secure its operations and proceed".⁴²⁸ Yet, a five-year evaluation report of the NCGLE notes that although the Coalition was perceived as "a united and representative structure"⁴²⁹ publicly claiming over 70 affiliates and a commitment to building a "strong social movement of bisexual, gay, lesbian and transgendered people with a fully representative leadership"⁴³⁰ this was in fact "an area of conspicuous failure".⁴³¹ Fewer than 25 of these affiliates actually existed as organisational realities, and crucially, transgender, as a claimed constituency, did not seem to exist beyond the "public stated purposes of the coalition", appearing sporadically in relation to funding documents.⁴³²

Regional Flows

The Constitutional shifts in South Africa had significant impact in relation to the circulation of LGBT human rights, sexual identity politics, and the seemingly fairly vacant category of 'transgender'. By acknowledging the rights of 'sexual minorities', South Africa, by extension, also acknowledged the very existence of 'sexual minorities'. This acknowledgment and the rights connected to it were constitutive of a visible gay identity. Within Africa, for certain countries, this recognition in terms of rights and legal subjectivity ostensibly gave "gay identity form and substance" and were immediately marked, as noted, as highly controversial.⁴³³ Concomitantly, in relation to this growing discourse regarding LGBT human rights, the NCGLE postured itself as "leading in Southern Africa",⁴³⁴ focusing on greater movement-building within the region,⁴³⁵ hoping to create "new forms of community

⁴²⁸ NCGLE. (1995). *We Must Claim Our Citizenship! Report of the Interim Executive (IEC) of the NCGLE: December 94 - December 95*. NCGLE Collection, AM 2615, Gay and Lesbian Memory in Action Archives of South Africa (GALA), Johannesburg, William Cullen Library, University of the Witwatersrand. p. 6.

⁴²⁹ Nell and Shapiro CC. (1999). *Taking the Struggle Forward: An Evaluation of the National Coalition for Gay and Lesbian Equality*. Report Commissioned by the NCGLE, NCGLE Collection, AM 2615, Gay and Lesbian Memory in Action Archives of South Africa (GALA), Johannesburg, William Cullen Library, University of the Witwatersrand. p. 1.

⁴³⁰ Ibid., p. 8.

⁴³¹ Ibid.

⁴³² Ibid.

⁴³³ Phillips, O. (2000). Constituting the Global Gay: Issues of Individual Subjectivity and Sexuality in Southern Africa. In D. Herman & C. Stychin (Eds.), *Law and Sexuality: The Global Arena*. University of Minnesota Press, p. 25.

⁴³⁴ Mtetwa, P. (1998, October 2). *Legal Strategy Workshop - Side B*. Presented at the National Coalition for Gay and Lesbian Equality National Conference. NCGLE Collection, AM 2615, Gay and Lesbian Memory in Action Archives of South Africa (GALA), Johannesburg, William Cullen Library, University of the Witwatersrand. p. 25.

⁴³⁵ Nell and Shapiro CC. (1999). *Taking the Struggle Forward: An Evaluation of the National Coalition for Gay and Lesbian Equality*. Report Commissioned by the NCGLE, NCGLE Collection, AM 2615, Gay and Lesbian Memory in Action Archives of South Africa (GALA), Johannesburg, William Cullen Library, University of the Witwatersrand. p. 61.

and of citizenship”.⁴³⁶ By doing so, NCGLE extended what had been framed as the attainment of legislative protections within South Africa under the rubric of LGBT rights as human rights beyond the country’s borders.

Certainly, the adverse reaction by some countries within Africa to these suddenly highly-visible proposed human rights became one of the hallmarks of Africa in the 1990s. Hoad, in tracking the emergence of LGBT human rights in Southern Africa, argues that the moment that placed gay and lesbian identities on national agendas was the banning of GALZ (Gays and Lesbians of Zimbabwe) from the Zimbabwe International Book Fair by President Robert Mugabe in 1995, and the consequent attacks on homosexuality.⁴³⁷ For Oliver Phillips, Mugabe has been one of the most effective publicists for gay and lesbian identity and politics. Indeed, Phillips suggests that he “Introduced the word and concept of 'sexuality' into a previously virginal public discourse ... By publicising his homophobia President Mugabe ... [gave] ... an identity to many who were previously ignorant of or uncaring about it”.⁴³⁸ It is this singularity regarding the emergence of sexualities – their combined proclamation within developing human rights discourses, and denigration as sites of perversion by religious and political leaders – that suddenly elevated their formation as significant “constituent[s] of citizenship and identity”⁴³⁹ within Africa. This was accelerated by the involvement of national and international news media.

Presenting gay rights as human rights facilitated the creation of new organisations, and, within these, the growing use of LGBT rights rhetoric. The centrality of this framing as human rights did not go unnoticed by political leaders – as a Ugandan Minister quite clearly stated, “we know that homosexuality is a human right but also we need to appreciate the fact that it's not a human right across the world, and certainly in Uganda we don't take it as a human right”.⁴⁴⁰ At least three organisations were formed in Southern Africa in the 1990s in direct reaction to this tension. The Rainbow Project (TRP) of Namibia, for instance, emerged as a direct reaction to then-President Sam Nujoma’s denial of the existence of gays

⁴³⁶ Achmat, Z. (1998, October). *Legal Strategy Workshop - Side A*. Presented at the National Coalition for Gay and Lesbian Equality National Conference, NCGLE Collection, AM 2615, Gay and Lesbian Memory in Action Archives of South Africa (GALA), Johannesburg, William Cullen Library, University of the Witwatersrand. p. 2.

⁴³⁷ Hoad, N. (1999). Between the White Man’s Burden and the White Man’s Disease: Tracking Lesbian and Gay Human Rights in Southern Africa. *GLQ: A Journal of Gay and Lesbian Studies*, 5(4), p. 563.

⁴³⁸ Phillips, O. (2000). Constituting the Global Gay: Issues of Individual Subjectivity and Sexuality in Southern Africa. In D. Herman & C. Stychin (Eds.), *Law and Sexuality: The Global Arena*. University of Minnesota Press, p. 24.

⁴³⁹ *Ibid.*, p. 25.

⁴⁴⁰ von Wallström, J. (Director) (2014, December 8). A Ugandan Transgender Girl Fights for her Right to Love. Chapter 1: The Woman - The Bill. YouTube Pearl of Africa TV [Online Mini Documentary]. Video posted to <https://www.youtube.com/watch?v=BR9n4Q-OnLI>

and lesbians.⁴⁴¹ The NCGLE provided direct assistance in terms of proposal/grant writing and capacity-building, ensuring that the fledgling organisation benefited directly from the advancements and LGBT human rights model utilised in South Africa.⁴⁴² This connection between funding, global political trends, language, and transnational influences, in relation to the use and spread of LGBT rights terminology cannot be overstated. It must be noted here that very few, if any, LGBT organisations in Africa receive funding, let alone political support, from their respective governments.⁴⁴³ Survival requires external funding, which requires a particular kind of rights-based language of communication.

In 1998, the Lesbian, Gays, Bisexual and Transgender Persons Association (LEGATRA) of Zambia was established in the wake of the public ‘coming out’ of Zambian Francis Yabe Chisambisha. This was possibly the first organisation on the African continent to use transgender in its name. Its establishment, though, was nothing but a name: LEGATRA never registered as an NGO. In fact, the organisation was a complete fallacy: its establishment is understood to be a direct attempt to syphon possible available funding for LGBT human rights work from transnational organisations.⁴⁴⁴

These models, including the framing and language of LGBT, were taken up initially in Southern Africa, and eventually spread more widely. In the Executive Summary of a 2005 report on LGBT Organising in East Africa, it was noted, “the experiences from Southern Africa are shared as a model from which East African LGBTI groups may shape themselves”.⁴⁴⁵ As with the NCGLE model, Ashley Currier notes that within these models the use of transgender continued to appear, in direct relation to “public visibility strategies”.⁴⁴⁶ Arguably, it was this willing adoption of the *language* of LGBT human rights by South Africa, followed by organisations in Southern Africa, along with the influence of international funders, repeating itself cross-continentially that led to the initial, though dormant, establishment of the category ‘transgender’.

⁴⁴¹ Kiragu, J., & Nyong'o, Z. (Eds.). (2005). *LGBTI Organizing in East Africa: The True Test of Human Rights Defenders*. Nairobi: Urgent Action Fund Africa, p. 44.

⁴⁴² Ibid., p. 33.

⁴⁴³ Ashley Currier unpacks some of the pitfalls of being an LGBT-focused organisation in Africa, having to rely on funding from the Global North. This often means balancing survival against further accusations of being unAfrican. See: Currier, A. (2007, June 26). *The Visibility of Sexual Minority Movement Organizations in Namibia and South Africa* (Doctor of Philosophy). University of Pittsburgh.

⁴⁴⁴ Long, S. (2014, July 6). Sodomy in Zambia. Retrieved July 31, 2015, from <http://paper-bird.net/2014/07/06/sodomy-in-zambia/>

⁴⁴⁵ Kiragu, J., & Nyong'o, Z. (Eds.). (2005). *LGBTI Organizing in East Africa: The True Test of Human Rights Defenders*. Nairobi: Urgent Action Fund Africa p. 12

⁴⁴⁶ Currier, A. (2015). Transgender Invisibility in Namibian and South African LGBT Organizing. *Feminist Formations*, 27(1), p. 92.

Refugee Act – ‘Members of a Particular Social Group’

Sunday night at the Summit Club in Hillbrow. Anita, a pint-sized Whitney Houston lookalike in white micro-mini and fuck-off platforms, is belting out a flawless lip-sync of Miss Whitney’s classic, ‘It’s not right, but it’s OK’. Anita’s upturned almond eyes sparkle as the red stage light brushes her high, honeyed cheekbones. She gyrates, bends, touches her toes, and flashes that impossibly broad white smile. Her energy is total. The audience – mostly black, male and heterosexual – chug down their Black Labels and cheer raucously. Little do they realise the title of the song has a certain hidden poignancy.⁴⁴⁷

As these notions of enshrined LGBT rights and models of political, legal, and social engagement circulated outwards from South Africa, asylum seekers began to trickle towards the country.⁴⁴⁸ For many, their move was a direct result of what they had heard about the possibilities of protection and prosperity in South Africa. Considered one of the first known asylum seekers to claim refugee status due to persecution based on sexual orientation, Anita – or as she was known offstage, Azu Udogu, a former winner of both the Miss Nigeria and Miss Lagos drag competitions – arrived in South Africa in December 1998.⁴⁴⁹ Crucially though, something often overlooked within the archive in relation to Udogu’s life is her⁴⁵⁰ gender identity

I’m a transgender and I’m a transvestite because I do cabaret shows for transvestites ... everyday of my life I live like a woman ... and I would like to be related to like a woman ... I’m on hormones ... I don’t want to be related to as a gay man because I’m a transgender I want to be treated I’m just like a woman⁴⁵¹

It was after experiencing multiple arrests, public harassment and beatings for being – perceived to be – gay, that Udogu fled Nigeria: for the country that, as local news media had

⁴⁴⁷ Levin, A. (2003, May 7). *“Pink Refugees” in South Africa Seek Refuge From Persecution at Home*. Retrieved August 13, 2015, from <http://www.rainbownetwork.com/content/Feature.asp?featid=13214>

⁴⁴⁸ The first reports of asylum seekers requesting protection due to their sexual orientation or gender identity started to appear in the late 1990s. Although no longer in existence, the Equality Project assisted some of the first gays and lesbians seeking asylum. See: Isaack, W. (2009). *African Lesbian & Gay People – Final Destination South Africa?*. Legal Resource Centre.

⁴⁴⁹ Levin, A. (2003, May 7). *“Pink Refugees” in South Africa Seek Refuge From Persecution at Home*. Retrieved August 13, 2015, from <http://www.rainbownetwork.com/content/Feature.asp?featid=13214>

⁴⁵⁰ In almost all news articles published on Udogu, she has been referred to as ‘he’; however, I take guidance from her words regarding her preferred pronoun. “I’ve always told myself that I’m transgender, I thought and lived like a woman and I think that is comfortable with me. I always like it when somebody calls me she, when they call me he I ask them “which one is he?”, I’m a girl.”

⁴⁵¹ Gay and Lesbian Memory in Action Archives of South Africa (GALA). (2003, September 29). *Interview with Azu Udogu*. Available at ‘Archiving GALA collection’ – AM3160, Johannesburg, William Cullen Library, University of the Witwatersrand.

reported, had enshrined the rights of sexual minorities.⁴⁵² Critically reflecting the paradoxical nature of both the proclamation and denigration of LGBT human rights across the continent during the 1990s, Udogu notes that her attackers would beat her saying, “let them die just like what Mugabe said that they are worse than dogs anyway”.⁴⁵³

The NCGLE suggested that by the mid 1990s, there were probably, among the estimated 6-8 million ‘aliens’ living in South Africa, “many thousands of gay and lesbian people displaced because of their sexual orientation”.⁴⁵⁴ Many of these ‘aliens’ arrived in the country only to experience a system of profound contradiction. While the Constitution explicitly forbade discrimination on the basis of gender, sex, or sexual orientation, some of the provisions of the Aliens Control Act (ACA) – a document largely based on the deeply racist, homophobic and xenophobic Aliens Act of 1937, and the 1913 Immigration Act – directly contravened this.⁴⁵⁵ The incongruence between South Africa’s Constitution, notions of the Rainbow Nation and the country’s non-existent asylum regime was further exacerbated when, in 1995, South Africa became party to the *1951 UN Convention on the Status of Refugees* and the *Protocol to the UN Convention on the Status of Refugees* – both of which are central to the international refugee protection regime today.⁴⁵⁶ Article 1A (2) of the UN Convention provides a singular, universally-applicable definition of a refugee providing five grounds⁴⁵⁷ on which a person may claim asylum. Within these five grounds,

⁴⁵² Levin, A. (2003, May 7). “Pink Refugees” in South Africa Seek Refuge From Persecution at Home. Retrieved August 13, 2015, from <http://www.rainbownetwork.com/content/Feature.asp?featid=13214>

⁴⁵³ Gay and Lesbian Memory in Action Archives of South Africa (GALA). (2003, September 29). Interview with Azu Udogu. Available at ‘Archiving GALA collection’ – AM3160, Johannesburg, William Cullen Library, University of the Witwatersrand.

⁴⁵⁴ Wakeford, C. E. (1996). *Lobbying and Advocacy Project Report*. NCGLE Collection, AM 2615, Gay and Lesbian Memory in Action Archives of South Africa (GALA), Johannesburg, William Cullen Library, University of the Witwatersrand. p. 2.

⁴⁵⁵ Dodson, B. (2001). Discrimination by Default? Gender Concerns in South African Migration Policy. *Africa Today*, 48(3).

⁴⁵⁶ It has since been supplemented by subsidiary protection instruments in several regions including the 1969 African Union Convention created to address the protection of refugees across Africa. It remains the only treaty to include an elaboration of the definition of refugee found the 1951 convention. The extended definition is considered by the UNHCR as ‘complimentary protection’, created to address the region’s specific refugee generating issues which include “external aggression, occupation, foreign domination or events seriously disturbing public order”. Its necessity is rooted in the perception that the UN Convention is unable address two key issues for the African continent in particular: “the struggle against colonialism and apartheid, as well as relations between African states including the control of subversive activities”. Source: UN High Commissioner for Refugees (UNHCR). (2005, June). Protection Mechanisms Outside of the 1951 Convention (“Complementary Protection”). Retrieved July 13, 2014, from <http://www.refworld.org/docid/435e198d4.html> p. 13

⁴⁵⁷ “Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to, or owing to such fear, is unwilling to avail

‘membership of a particular social group’ is broadly understood to include those fleeing persecution on the basis of sexual orientation and/or gender identity.

The lack of legislation implementing post-Apartheid South Africa’s obligations under both the UN and the AU Conventions meant that much of what was meant by ‘refugee’, ‘asylum seeker’ and ‘refugee rights’, let alone the “particularly contentious”⁴⁵⁸ issue of discrimination ‘based on sexual orientation’, were open to interpretation by the Department of Home Affairs. Udogu, perhaps unsurprisingly then, first applied for asylum on the basis of ‘political opinions’.⁴⁵⁹ The NCGLE played an undeniably critical role in challenging the constitutionality of the ACA, in some ways expediting the evident need for refugee-specific legislation. It must be noted, though, that at the time their focus was the gaining of immigration rights for same-sex couples. Refugee issues were a secondary concern. In the wake of the constitutional challenge and the clear lack of adequate legislation, the UNHCR’s regional office developed a draft Refugee Bill incorporating the central tenets of the UN Convention. It is arguable that, at this point, the idea of transgender-specific asylum seekers would have been almost entirely inconceivable to the NCGLE. Prior to making a submission to Home Affairs in 1997, regarding immigration and asylum, a memo of the proposed document was circulated within the NCGLE with a request for clarity over whether “sexual orientation included transgender people?”⁴⁶⁰ In the final submission sent to Home Affairs, the Coalition noted that South Africa had signed the UN Convention and that internationally, those fleeing persecution due to sexual orientation and/or gender identity had increasingly been able to claim asylum on the grounds of “membership of a particular social group”. Moreover, the Coalition argued, reading the UN Convention alongside the Constitution allowed for a uniquely inclusive approach which they commended, and urged the DHA to retain in the final Act.⁴⁶¹ Conspicuously, all references by the Coalition to transgender people were removed.

The South African Refugees Act, no. 130 of 1998⁴⁶² aligned refugee protection with the Constitution, giving asylum seekers fleeing a broad scope of persecutions an explicit legal

himself of the protection of that county”. Source: Art 1A(2) of the 1951 Convention Relating to the Status of Refugees

⁴⁵⁸ Wakeford, C. E. (1996). *Lobbying and Advocacy Project Report*. NCGLE Collection, AM 2615, Gay and Lesbian Memory in Action Archives of South Africa (GALA), Johannesburg, William Cullen Library, University of the Witwatersrand. p. 2.

⁴⁵⁹ Gay and Lesbian Memory in Action Archives of South Africa (GALA). (2003, September 29). *Interview with Azu Udogu*. Available at ‘Archiving GALA collection’ – AM3160, Johannesburg, William Cullen Library, University of the Witwatersrand.

⁴⁶⁰ Wakeford, C. E. (1997, June 2). *Home Affairs Memo*. NCGLE Collection, AM 2615, Gay and Lesbian Memory in Action Archives of South Africa (GALA), Johannesburg, William Cullen Library, University of the Witwatersrand. p. 1.

⁴⁶¹ *Ibid.*, p. 8.

⁴⁶² The Act established a single asylum procedure, based on an approach of local integration, allowing refugees to integrate into society and access constitutional

claim to protection⁴⁶³. The combination of both the UN Convention along with subsequent UN guidelines and the South African Constitution ostensibly ensure the rights and recognitions of transgender individuals fleeing persecution in their countries of origin. Seen as members of a particular social group, with some established international precedent in this regard,⁴⁶⁴ transgender people would theoretically be able to attain refugee status in South Africa due to persecution based on gender identity or expression. Yet, after the establishment of the Refugee Act, Udogu, with the assistances of the Equality Project (formerly the NCGLE) changed her application to one of sexual orientation. To date, not a single known applicant has ever requested or gained asylum on the basis of gender identity in South Africa. While transgender was certainly a contentious political topic internationally in the 1990s – influencing both the language of human rights work and the focus of transnational organisations – Udogu provides some insight into its presence and perception in relation to South Africa:

I would like to have sponsors of gay rights to know that what they don't know is that there are other homosexuals like transgender and transvestites. Not just gay men ... This [being transgender] is not allowed in my country but it is allowed in this country.⁴⁶⁵

It would take Udogu five years after the passing of the Act to be awarded refugee status.

The Alteration of Sex Description and Sex Status

The passing of a Refugee Act unique on the African continent in terms of its coverage, as argued, certainly facilitated the possibility of asylum for transgender-identified people for the first time in South Africa's history. However, as Udogu notes, 'being transgender' was perceived by those experiencing persecution beyond the country's borders only as 'being allowed' in South Africa. It was unclear (given the legal possibility for, yet Constitutional absence of, the term itself, its ad hoc usage by the NCGLE through the 1990s and the lack of a visible constituency, given the dissipation of Phoenix) what this 'being allowed' actually meant. At the time that Udogu was officially awarded refugee status, in 2003, an article appeared in the *City Press* heralding the re-emergence of the South African Law Commission's report *Investigation into the Legal Consequences of Sexual Realignment and*

rights and freedoms. This differed from the general African approach, as seen in countries like Kenya, of accommodating refugees in large camps. Asylum seekers and refugees now had a legal right to registration and documentation and – importantly for gender refugees – access to services such as healthcare, including the ability to access gender-affirming healthcare.

⁴⁶³ Handmaker, J. (2011). Public Interest Litigation for Refugees in South Africa and the Potential for Structural Change. *South African Journal on Human Rights*, 27(1), p. 73.

⁴⁶⁴ See Appendix 1.

⁴⁶⁵ Gay and Lesbian Memory in Action Archives of South Africa (GALA). (2003, September 29). *Interview with Azu Udogu*. Available at 'Archiving GALA collection' – AM3160, Johannesburg, William Cullen Library, University of the Witwatersrand.

*Related Matters*⁴⁶⁶ and its accompanying bill *The Realignment of Sexual Orientation Bill*. The bill had by this time been renamed *The Alteration of Sex Description and Sex Status Bill*.⁴⁶⁷ More surprisingly, considering the political absence of transsexual/transgender people, the article reported that the urgency of legislation had resulted from the growing number of court cases against the Department of Home Affairs by individuals who wanted to change their sex and that the DHA had lost nearly 90% of those cases.⁴⁶⁸ In order to lobby for the passage of the Sex Status Bill, the *Cape Town Transsexual/Transgender Support Group* was formed; this represented, perhaps, the first moment of transgender as a visible political manifestation in South Africa. According to Estian Smit, one of the group's representatives, "both the terms transgender and transsexual were used partly in order to be inclusive in terms of the self-identification or personal histories of the members of the group, as well as for strategic lobbying purposes."⁴⁶⁹

Smit adds that the impetus for the formation of the Support Group was in part agitated by The Equality Project's "transphobic Parliamentary submission"⁴⁷⁰ regarding the Bill. Resurrecting the ghosts of Apartheid, The Equality Project – the organisation in part responsible for the circulation of 'T' as part of LGBT human rights beyond South Africa's borders – highlighted what they referred to as the "sinister aspect" of "the allowance for changing sex description in the 1963 Births and Deaths Registration Act". In that "Sex changes were used by the apartheid government as a means of oppression".⁴⁷¹ The Support Group argued that the Law Commissions report itself was unethical, academically inferior, and reliant on sexist, homophobic and outdated pathological terminology.⁴⁷² Indeed, the perceptions maintained in the Report – considering it was initially published in 1995 and included no references to any publications after the 1980s – were, by 2003, at best archaic. In particular, The Support Group argued, it overlooked the "emergence of an independent and critical international transsexual/transgender community".⁴⁷³ They added that any bill

⁴⁶⁶ South African Law Commission. (1994). *Investigation Into the Legal Consequences of Sexual Realignment and Related Matters (Report)*. Pretoria: South African Law Commission.

⁴⁶⁷ Mkhabela, M. (2003, March 2). Cabinet Faces Sexual Status Bill. *City Press*.

⁴⁶⁸ Ibid.

⁴⁶⁹ Camminga, B. (2014, October 10). Email Interview with Estian Smit – Cape Town Transsexual/Transgender Support Group. Cape Town.

⁴⁷⁰ Ibid.

⁴⁷¹ Portfolio Committee on Home Affairs (2003). *Alteration of Sex Description and Sex Status Bill: hearings 9 September 2003*. Cape Town: Parliamentary Monitoring Group.

⁴⁷² Cape Town Transsexual/Transgender Support Group (2003). *Request by the Cape Town Transsexual/Transgender Support Group to the South African Home Affairs Portfolio Committee For an Extended Submission Period for the Alteration of Sex Description and Sex Status Bill, 2003*. (Portfolio Committee on Home Affairs). Cape Town: Parliamentary Monitoring Group.

⁴⁷³ Camminga, B. (2014, October 10). Email Interview with Estian Smit – Cape Town Transsexual/Transgender Support Group. Cape Town.

being written for South Africa would need to draw on international standards,⁴⁷⁴ whilst recognising the unique social and economic position of the country. This would include the need for a provision “for legal recognition of a change in sex identity ... [for] ... foreign-born people”.⁴⁷⁵ The Chair of the Committee clarified that the legislation was intended for South African citizens only, as the National Population Register did not contain the details of foreigners and thus it would not apply to them.⁴⁷⁶

The Bill, along with the eventual Act, reveal crucial insights into the understandings of gender and sex at the turn of the new millennium in South Africa’s history. Key here is the discussion around its naming. A representative of The Support Group suggested that the Bill be renamed *The Gender Recognition Bill*.⁴⁷⁷ Another submission suggested the Bill be named the *Alteration of Sex Designation Bill*.⁴⁷⁸ The Chair noted with some concern that the issue with regards to the naming of the Bill seemed to arise from the distinction between sex/gender.⁴⁷⁹ In an effort to provide some clarity the State Law Advisor stressed that according to the Law Commission Report, gender was:

*More psychological than biological. The Bill dealt only with formalities – it did not dictate social, moral and mental issues. The problem the Bill addressed was that the records on the register were based on biology. The Bill was proposed to allow changes to sex description.*⁴⁸⁰

This return to the Law Commission’s controversial (and outdated) report as the basis for the answer regarding the reasoning behind the use of ‘Sex Description’ is critical here. As

⁴⁷⁴ The Group referred to the UK’s Gender Recognition Act which provides such a mechanism for foreign-born people. This was underpinned by a 2002 European Court of Human Rights which ruling that failure in recognising a change of sex would be a breach of the European Convention on Human Rights. Source: Cape Town Transsexual/Transgender Support Group (2003). *Request by the Cape Town Transsexual/Transgender Support Group to the South African Home Affairs Portfolio Committee For an Extended Submission Period for the Alteration of Sex Description and Sex Status Bill, 2003*. (Portfolio Committee on Home Affairs). Cape Town: Parliamentary Monitoring Group.

⁴⁷⁵ Cape Town Transsexual/Transgender Support Group (2003). *Request by the Cape Town Transsexual/Transgender Support Group to the South African Home Affairs Portfolio Committee For an Extended Submission Period for the Alteration of Sex Description and Sex Status Bill, 2003*. (Portfolio Committee on Home Affairs). Cape Town: Parliamentary Monitoring Group.

⁴⁷⁶ Parliamentary Monitoring Group (2003). *Alteration of Sex Description and Sex Status Bill: hearings*. (Portfolio Committee on Home Affairs). Cape Town: Parliamentary Monitoring Group.

⁴⁷⁷ Portfolio Committee on Home Affairs (2003). *Alteration of Sex Description and Sex Status Bill: hearings 9 September 2003*. Cape Town: Parliamentary Monitoring Group.

⁴⁷⁸ Rood, E. (2003). Eric Rood’s Written Submissions on the Alteration of Sex Description and Sex Status Bill (B37 – 2003). (Portfolio Committee on Home Affairs) (2003). Cape Town: Parliamentary Monitoring Group.

⁴⁷⁹ Portfolio Committee on Home Affairs (2003). *Alteration of Sex Description and Sex Status Bill: hearings 9 September 2003*. Cape Town: Parliamentary Monitoring Group.

⁴⁸⁰ Ibid.

the central document upon which members of Parliament, including the State Law Advisor, relied to inform their understandings, the report was supportive of the need for the facilitation of the ability to access 'sex change'. Surgery and hormone treatment were presented as a means through which to provide "a normal biological male or female ... the *appearance* of the opposite sex".⁴⁸¹ This notion of appearance is central. The report stressed at several points: "there is no such phenomenon as a true sex change or sexual metamorphosis. The transsexual who undergoes sex change procedure takes on the realistic form and appearance of his or her post-operative sex".⁴⁸² Following this, adequate documentation was presented as a means through which to ensure that "there is no discrepancy between ... *apparent sex* ... and *registered sex*".⁴⁸³ What we see here is a delineation between 'true sex' (which is presented as dimorphous, biological and unchangeable), 'apparent sex' or "psychological sex i.e. gender"⁴⁸⁴ (that which is expressed) and 'registered sex' (that which is presented on official registers and documentation).

Sex, then, was unambiguous: something definable by biology/medicine, a scientific fact; gender was a psychological factor, a cultural construct: outside the bounds of legal definition, but functioning nonetheless as a visible cultural or social interpretation of the stable dimorphic categories of sex. The purpose of the bill was to make it possible to recognise, legally, "change sexed appearance" as indicative of a "change of sex status" in order to avoid future "legal anomalies".⁴⁸⁵ The maintaining of the name Sex Description Act suggests, at least on the part of parliamentarians, a perception that what was being altered was not sex itself but rather the administrative representation and registration of sex in relation to its gendered presentation. The Alteration of Sex Description and Sex Status, no. 49 of 2003 stipulates that:

Any person whose sexual characteristics have been altered by surgical or medical treatment or by evolvment through natural development resulting in gender reassignment, or any person who is intersexed may apply to the Director-General of the National Department of Home Affairs for the alteration of the sex description on his or her birth register.⁴⁸⁶

In terms of wording, 'sexual characteristics' in the Act are defined as including "primary or secondary characteristics of gender characteristics". In turn, "gender characteristics" are defined as the "ways in which a person expresses his or her social identity as a member of a particular sex by using style of dressing, the wearing of a prostheses or other means".⁴⁸⁷

⁴⁸¹ South African Law Commission. (1994). *Investigation Into the Legal Consequences of Sexual Realignment and Related Matters (Report)*. Pretoria: South African Law Commission, p. 4.

⁴⁸² Ibid., p. 12.

⁴⁸³ Ibid., p. 15.

⁴⁸⁴ Ibid., p. 23.

⁴⁸⁵ Ibid., p. 55.

⁴⁸⁶ *The Alteration of Sex Description and Sex Status*, Act no. 49 of 2003 at 2.1.

⁴⁸⁷ Ibid.

Theoretically, the South Africa State would have to accept as sufficient for the alteration of sex, a person who had undertaken minimal medical intervention, such as seeing a psychologist and/or a traditional health practitioner,⁴⁸⁸ and/or adjusting the expression of their social identity with regards to their gender. In essence, in South Africa, a person has to be recognised as one of two sexes; it is not stipulated exactly how those sexes will be ascertained in relation to gender identity. Although it is almost certainly a given, within the biomedical context, that this would work along the lines of being expected to perform what would be considered a medically-deemed “appropriate” gender correlating with an appropriate binary sex.⁴⁸⁹

Notably, in the Parliamentary hearings that followed the passing of the bill, the word ‘transsexual’ was rarely mentioned by Members of Parliament⁴⁹⁰ and the word ‘transgender’ was never mentioned, except by the NGOs making submissions.⁴⁹¹ The Act itself makes no mention of either ‘transsexual’ or ‘transgender’, only ‘intersex’.⁴⁹² Key here is that Act 49 does not, in fact, cater to or for identities specifically. Instead, by avoiding the use of identitarian language and allowing for minimal medical intervention in terms of actualising “social identity as a member of a particular sex”,⁴⁹³ the Act arguably reflects a nuanced⁴⁹⁴ understanding of sex/gender within the South African socio-economic context.⁴⁹⁵ What makes Act 49 unique is that it was not introduced or brought about by a

⁴⁸⁸ Klein, T. (2012). Who Decides Whose Gender? Medico-legal classifications of sex and gender and their impact on transgendered South Africans’ family rights. *Ethnoscripts*, 14(2), p. 23.

⁴⁸⁹ However, state-run hospitals like Groote Schuur have begun to provide services to clients who identify outside or beyond binary categories. In doing so, the distinction between sex and gender identity and the functionality of the Act has become increasingly murky.

⁴⁹⁰ Ms M. Maunye (ANC) asked for an explanation of the terms intersexual and transsexual. Source: Portfolio Committee on Home Affairs. *Alteration of Sex Description and Sex Status Bill: hearings 9 September 2003*. (2003). Cape Town: Parliamentary Monitoring Group.
Ms Chohan-Kota (ANC) asked about the differentiation between transsexuality and intersexuality. Source: Portfolio Committee on Home Affairs (2003). *Alteration of Sex Description and Sex Status Bill: hearings 10 September 2003*. Cape Town: Parliamentary Monitoring Group.

⁴⁹¹ Namely: South African Human Rights Commission (SAHRC) Presentation, The Equality Project and the Support Group. Source: Portfolio Committee on Home Affairs (2003). *Alteration of Sex Description and Sex Status Bill: hearings 9 September 2003*. Cape Town: Parliamentary Monitoring Group.

⁴⁹² *The Alteration of Sex Description and Sex Status*, Act no. 49 of 2003 at 2.1.

⁴⁹³ Ibid.

⁴⁹⁴ It must be stressed here that this nuance is limited by the investment in normative perceptions of sex and gender alignment.

⁴⁹⁵ Elsje Bonthuys provides an excellent critique of what happens when law directly imagines the identity of those for whom it caters, such as ‘gay’ or ‘lesbian’. The author notes that the Civil Union Act “fails to reflect a perception or understanding of the complexities and nuances of same-sex relationships in African communities” in that “they do not necessarily identify themselves as exclusively lesbian or gay, but

group of people with a specific identity that had turned to the Constitution demanding rights. In fact, this is a glaring absence in terms of the Act. Yes, The Support Group existed but it came into existence in relation to the Act and – markedly – disappeared thereafter. The Act, for all intents and purposes, would have passed either way: the Support Group certainly improved on its fundamentals, but they were not the cause of its emergence or its eventual solidification. The Act itself, however, within two years of its passing, would function as an eventual catalyst for the formation of a more robust political organising in relation to transgender.

‘The Africa Transgender Movement Starts Here!!’⁴⁹⁶

Transgender remained a vacant site of politics until the establishment, in 2005, of Cape Town-based NGO Gender DynamiX (GDX), describing themselves as the “first African based [sic] organisation solely focused on the transgender community”.⁴⁹⁷ The organisation marks a key shift in the development and circulation of transgender not simply as a term functioning within a wider LGBT human rights mandate, but as a stand-alone politics within South Africa and across the continent. What is critical to note here is that GDX emerged as a direct result of the lack of support and information available to transgender and transsexual people in South Africa: in direct relation to the rights and possibilities set out in Act 49.⁴⁹⁸ This is in stark contrast to most LGBT organisations, which emerge, as for instance the NCGLE did, to agitate for rights. Much like its predecessor, Phoenix Society, international networking with UK-based organisations such as the *Gender Trust*⁴⁹⁹ assisted in providing resources and facilitating its initial establishment.⁵⁰⁰ In some ways, the organisation stepped into a ready-made category, but not without difficulty, particularly as the constituency they hoped to serve was considered invisible or lacking “the terminology to identify their gender identity.”⁵⁰¹ In light of this, the terminology of ‘transgender’ was something the organisation

often take on the gender identity of the opposite sex like transsexuals”. Source: Bonthuys, E. (2008). Possibilities Foreclosed: The Civil Union Act and Lesbian and Gay Identity in Southern Africa. *Sexualities*, 11(6), p. 734- 735.

⁴⁹⁶ Gender DynamiX (GDX). (2010, June 8). Transgender African activists meet in Namibia. Windhoek, Namibia. [Video File]. Video posted to <http://www.youtube.com/watch?v=Er98BdHcN3E>

⁴⁹⁷ *About Us*. (2012, August 2). Retrieved November 27, 2014, from <http://www.genderdynamix.org.za/about/>

⁴⁹⁸ Klein, T. (2009). Intersex and Transgender Activism in South Africa. *Liminalis*, 3.

⁴⁹⁹ Started by Alice Purnell in 1990, who is also credited with introducing transgender to a British audience.

⁵⁰⁰ Klein, T. (2009). Intersex and Transgender Activism in South Africa. *Liminalis*, 3, p. 34.

⁵⁰¹ ILGA. (2011, March 2). *South Africa: Lack of bisexual, transgender and intersex people causes an imbalance in representation*. Retrieved December 5, 2014, from <http://ilga.code8.cz/south-africa-lack-of-bisexual-transgender-and-intersex-people-causes-an-imbalance-in-representation/>

has often had to introduce – in some cases to replace existing language – something they have had to “stimulate”.⁵⁰² As founder Liesl Theron explains,

I visited ... a support group ... in Mamelodi ... When I introduced myself and Gender DynamiX and the work we do, I kept on saying I work with transgendered people and I kept on seeing these blank stares ... I said to the people ‘so, do you all know what transgender is?’ And then again blank stares ... So I say to them, I work with people who are known as sex changes. ‘Oh yes! We all know’ ... so then the whole conversation lit up ... I realised that in many black communities ... here in the 80’s ... it was known to speak of a transgender person as ‘a sex changes’ ... So it is a clear thing for me that on the one hand you want to educate people, to use better terminology that is more acceptable ... on the one hand we want to keep up, in speed and terminology and things internationally, to be in the same league, but on the other hand we ... don’t want to enforce terminology on people⁵⁰³

As a South African-based organisation, GDX is peculiar in relation to what has historically been the standard trajectory or model for LGBT human rights groupings. From the outset, unlike its predecessors, the organisation situated itself as “African based”, de-emphasising notions of South African exceptionalism. In both rhetoric and practice, their approach has been distinctly transnational, situating themselves as a key player within the wider global trans movement. In essence then, the organisation has not only been taking “better terminology” to South Africans, but also actively cultivating it regionally, simultaneously engaging in transnational structures which espouse a specific language. For Theron, the need for regional work was clear:

South Africa is not an island and what we are doing as South Africans has an impact on the rest of the continent and what happens in the rest of the continent again comes to us ... If we then try to be an organisation that’s proactive try to seek one, two or three other countries where there is [sic] a number of transgender people who need medical help and we can try start working there, they don’t have to come here, we can equip and help them in the country where they are.⁵⁰⁴

As transgender reached a wider audience in South Africa, the organisation registered a growing number of requests for support, advice and often tangible assistance both from within South Africa and regionally. Victor Mukasa, a trans-identified individual from Uganda, was thrust into the spotlight in 2005 when he took the Attorney General of Uganda to court for an illegal raid on his home.⁵⁰⁵ Although in numerous news articles the case was framed as a landmark judgement affecting gay and lesbian people in Uganda, in reality the situation was far more nuanced. Due to the nature of the investigation and the threat it posed to Victor’s life, he became one of the first visible transgender nationals from another country

⁵⁰² Klein, T. (2009). Intersex and Transgender Activism in South Africa. *Liminalis*, 3, p. 19.

⁵⁰³ Klein, T. (2009). Intersex and Transgender Activism in South Africa. *Liminalis*, 3, p. 19.

⁵⁰⁴ Camminga, B. (2012, November 6). Interview with Liesl Theron – Director. *Gender Dynamix*. Cape Town.

⁵⁰⁵ Staff Writer. (2005, December 25). Court Gives Christmas Present to Ugandan Gays. *Afrol.com*. Retrieved November 21, 2014, from <http://www.afrol.com/articles/32072>

to seek refuge in South Africa. In 2006, Mukasa spoke at the UN about the hardships of being transgender in Africa. Referencing the emergent politics of transgender, he heralded the establishment of GDX and their work as a victory: “We are now claiming language and claiming spaces. Sometimes it is even difficult for us to understand ourselves because the world has been constructed to make us completely invisible. But now we are finding words to use for ourselves”.⁵⁰⁶

GDX, has described itself as being instrumental in the growth and the spread of “better terminology” beyond South Africa’s border. Regardless of their own eschewing of South African exceptionalism, the organization, in the same manner as the NCGLE/Equality Project, has been upheld as a model for transgender political organising across Africa, playing “a mentorship role in the Eastern and Southern African emerging trans movement”.⁵⁰⁷ The organisation’s *Founders’ Statement* makes clear that this regional focus in particular has been financially beneficial.⁵⁰⁸ This positive funding situation has come with certain requirements that cannot be overlooked in accounting for this politics of transgender, its emergence, and its deployment. Sibusiso Kheswa, former director of GDX explains:

You know, because there are people who are just living their lives ... but we ... say no, we see that life, That is trans. But the people don’t own the word, don’t identify, they don’t even know the meaning of the word. In many instances people will still call themselves gay or lesbian while they live the lives they live, you know? ... Like everything else, the donors have a lot of power and they decide what language and what activities or what work should be done ... they have so much influence ... And organisations then buy into it and we pass it on to the constituencies. That’s how it works ... because if there are people who would live the lives that they live and they don’t call themselves trans and we do work with them, I’m sure the donor would say, ‘but those are not trans people’ ... so we are also in this space where there is power dynamics amongst the stakeholders and the one with money has the most say.⁵⁰⁹

What is critical here is that prior to GDX, there was very little political substance to transgender in South Africa. It certainly, as Smit has pointed out, was a term in circulation and as the words and presence of Udogu suggest, this circulation was already happening beyond South Africa’s borders. This travel, as this chapter has argued, was part of the initial circulation of the wider rhetoric of LGBT human rights and so linked to a notion of both

⁵⁰⁶ Mukasa, V. (2006, December 7). *On Transgender Human Rights Issues in Africa*. Pambazuka.org. Retrieved May 14, 2014, from <http://pambazuka.org/en/category/comment/38727>

⁵⁰⁷ Theron, L. (2013, July). *The Founder*. Retrieved November 27, 2014, from <http://www.genderdynamix.org.za/about/gdx-founder-liesl-theron/>

⁵⁰⁸ “Our work in the region did not only advance GDX in the current financial situation, but due to our relationships with activists and organisations in other countries over a period of a few years, we managed to build a reputable name for us” – Theron, L. (2013, July). *The Founder*. Retrieved November 27, 2014, from <http://www.genderdynamix.org.za/about/gdx-founder-liesl-theron/>

⁵⁰⁹ Camminga, B. (2012, November 6). Interview with Sibusiso Kheswa – Advocacy Coordinator. *Gender Dynamix*. Cape Town.

rights and South Africa. These power dynamics and this regional flow of transgender, as a politics, not only accounts for how people come into contact with transgender as a term but also how they might end up in South Africa, applying for asylum. Reflecting on Mukasa's UN speech the emergence of transgender as a politics directly linked to South Africa arguably facilitated the political possibility of visibility and a claiming of space. Returning to the introductory words of Valentine, transgender as a politics for people like Mukasa then became a site of "power to explain who we are", and enabled possibilities for "action in the world".⁵¹⁰ Yet, as Valentine suggests and perhaps Kheswa reflects, transgender as term with political power also contains the ability to "limit" possibilities. It is to these limits and their relationship to the constitutional-legal make up of asylum in South Africa that this chapter now turns.

"The Stigma of Western Words"⁵¹¹

In December 2009, Malawian Tiwonge Chimbalanga was arrested and charged with 'unnatural offences' and 'indecent practices between males' after her engagement ceremony to Steven Monjeza was made public.⁵¹²

Journalists came to my wedding with Steven Monjeza. One of the journalists questioned Steven Monjeza, "Steven are you gay?" and he said "yes" because he does not go to school [he was not well educated] ... So another question come, Auntie Tiwonge are you gay or straight? I didn't answer because this was a nonsense question. So they wrote the story about the wedding and Monday 12 o'clock the police came to Mankhoma Lodge and arrested me and Mr Monjeza. On our way to the police station people were dancing, some saying 'kill Tiwonge', people was talk, talk, talk, talk saying lots of things but it's a part of life.⁵¹³

The jailed "gay lovebirds" made headlines worldwide.⁵¹⁴ International donors and human rights groups condemned the Malawian State for what they called the abuse of "gay human rights"⁵¹⁵ and called for the South African government not only to advocate for the

⁵¹⁰ Valentine, D. (2007). *Imagining Transgender: An Ethnography of a Category*. London: Duke University Press, p. 233.

⁵¹¹ Camminga, B. (2012, November 6). Interview with Liesl Theron – Director. *Gender Dynamix*. Cape Town.

⁵¹² IGLHRC. (2010, May 18). *IGLHRC and CEDEP Condemn Malawi Court's Conviction of Imprisoned Couple*. Cape Town. Retrieved November 20, 2014, from <http://iglhrc.org/content/iglhrc-and-cedep-condemn-malawi-courts-conviction-imprisoned-couple>

⁵¹³ Pereira, J. (Director) (2012). *Tiwonge & Steve's Story*. [Video File]. Video posted to https://www.youtube.com/watch?v=-ucE_3IT1iU

⁵¹⁴ Gevisser, M. (2014). No respite for Africa's transgender poster girl. *Mail and Guardian*. Retrieved December 5, 2014, from <http://mg.co.za/article/2014-12-05-no-respite-for-africas-transgender-poster-girl/>

⁵¹⁵ Reuters. (2010, March 22). *Malawi gay couple "has a case."* Retrieved August 14, 2015, from www.news24.com/Africa/News/Malawi-gay-couple-has-a-case-20100322

couple's release but to offer the two asylum.⁵¹⁶ The case itself was far more complex, politically and socially, than was intimated by the news media or the transnational NGOs – who became immediately involved in advocating for the release of the two. While the case was being touted as “a test case for gay rights”⁵¹⁷ and the vast majority of news headlines suggested that the pair were the “first ‘gay’ couple to attempt marriage in Malawi”,⁵¹⁸ Chimbalanga identified as a woman.⁵¹⁹ Indeed, Chimbalanga, assigned male at birth, had been raised by her uncle – the village chief – and accepted as female since she was a child:

My uncle and family accepted me as a girl. ... When people insulted me, my family made a complaint, and the culprits were taken to traditional court and fined some chickens.⁵²⁰

Prior to the engagement, Chimbalanga had been living as a woman and Monjeza had presented her to his family as such. She performed several duties set aside for women within her community and was an active member of her local church's Women's League. Members of her community, including her employer – interviewed in the aftermath of the arrest – expressed surprise at the idea that she was anything other than female.⁵²¹

It is notable that until the day of their engagement ceremony or chinkhoswe, there is no evidence to suggest that either of the words ‘gay’ or ‘transgender’ were used either in relation to the couple or by the couple themselves. Arguably, the local news media – recognising the possible traction of a report on gay marriage, a controversial topic internationally at the time, and in an African country, no less – took a seemingly unknown couple, removed from the politics of LGBT/gay rights and propelled them into the international spotlight. As Theron explains, “with the whole stigma of these western words ... it immediately became quite well known that this is wrong, this is not the right thing, so now they were in trouble”.⁵²² As noted by Chimbalanga, the question of whether she was

⁵¹⁶ NPR Staff and Wires. (2010, May 20). *Gay Couple In Malawi Sentenced To 14 Years*. Retrieved August 14, 2015, from <http://www.npr.org/templates/story/story.php?storyId=127014509>

⁵¹⁷ Reuters. (2010, March 22). *Malawi gay couple “has a case.”* Retrieved August 14, 2015, from www.news24.com/Africa/News/Malawi-gay-couple-has-a-case-20100322

⁵¹⁸ Smith, D. (2010, January 1). *Married Malawian gay couple face test to prove they had sexual relations*. *The Guardian*. Retrieved September 3, 2014, from <http://www.theguardian.com/world/2010/jan/01/malawi-gay-couple-married-test>

⁵¹⁹ Price, L. (2010). *The Treatment of Homosexuality in the Malawian Justice System: R v Steven Monjeza Soko and Tiwonge Chimbalanga Kachepa*. *African Human Rights Law Journal*, (10).

⁵²⁰ Gevisser, M. (2013). *Love in exile*. *The Guardian*. Retrieved November 6, 2015, from <http://www.theguardian.com/news/2014/nov/27/-sp-transgender-relationship-jail-exile-tiwonge-chimbalanga>

⁵²¹ Price, L. (2010). *The Treatment of Homosexuality in the Malawian Justice System: R v Steven Monjeza Soko and Tiwonge Chimbalanga Kachepa*. *African Human Rights Law Journal*, (10), p. 528.

⁵²² Camminga, B. (2012, November 6). *Interview with Liesl Theron – Director*. *Gender Dynamix*. Cape Town.

“gay” was a “nonsense question” because as a woman this simply did not make sense for her: “I have been like this since I was a child. I will never change. I am a woman forever. Even if they keep arresting me or kill me, they won’t change my mind”.⁵²³

Chimbalanga explains that it was not until her arrest that she had even heard the term gay, let alone transgender: “They told me that I was paid to do my chinkhoswe by the LGBTs from overseas. But the first time I heard the word ‘gay’ was when I saw it next to my photograph in the newspaper”.⁵²⁴ As it became apparent that Chimbalanga actually identified as a woman, transgender organisations around the world voiced frustration at the seemingly dominant framing of the case as a gay rights issue. As one transgender blogger stated,

This is a multilayered issue: clearly, trans and gay rights activists within Africa are identifying Tiwonge as a trans woman and see her conviction as transphobic state violence and injustice. However, mainstream international press and gay rights groups are co-opting the story to fit into their concept of the fight for marriage equality. The resulting coverage both silences trans women and ignores the voices and identities of Africans.⁵²⁵

As the leading voice of transgender advocacy on the continent, GDX weighed in on the issue, elucidating that to their knowledge Chimbalanga identified and expressed herself as a woman. In light of this, they argued, “If she knew the word transgender she would come home to a world of understanding of herself”.⁵²⁶ Yet, she never used the word transgender. Even while in prison, when asked – as it seems she was – by representatives from transnational organisations and media houses, she continued to identify simply as a woman. UK rights campaigner Peter Tatchell stated, regarding whether Chimbalanga identified as transgender: “I have arranged Malawian prison visitors for the last four months. I have got them to ask Tiwonge about his/her gender identity but the answers are unclear. I will get them to keep asking”.⁵²⁷ For Chimbalanga, the matter regarding who she was and whether she had broken the law was simple: “Which laws? I am a woman, I can do what a woman can do”.⁵²⁸

⁵²³ Blecher, S. (Director). (2013). *Two Men and a Wedding* [Documentary]. South Africa: CINGA Productions

⁵²⁴ Gevisser, M. (2013). Love in exile. *The Guardian*. Retrieved November 6, 2015, from <http://www.theguardian.com/news/2014/nov/27/-sp-transgender-relationship-jail-exile-tiwonge-chimbalanga>

⁵²⁵ Ray, A. (2010, May 21). *In The Interest of "Equality," Malawian Woman's Identity Is Erased*. Retrieved August 16, 2015, from <http://iwhc.org/2010/05/in-the-interest-of-equality-malawian-womans-identity-is-erased/>

⁵²⁶ Gender DynamiX (GDX). (2010, May 20). Malawian Couple Sentenced to 14 Years Hard Labour – Transgender Activists Speak Out [Web log comment]. Retrieved August 16, 2013 from <http://pinaytg.blogspot.com/2010/05/jailed-and-gay-ed.html>

⁵²⁷ Staff. (2010, May 31). *Frustration at coverage of Malawi couple*. Retrieved May 15, 2015, from http://www.gaynz.com/articles/publish/3/printer_8869.php

⁵²⁸ Tenthani, R., & Low, V. (2010, January 4). We have been beaten in jail, say first openly gay couple in Malawi. *The Times Online*. Retrieved August 15, 2015, from

Due to international pressure, the two, after being sentenced to fourteen years' hard labour, were pardoned by the President "on humanitarian grounds".⁵²⁹ A far more plausible explanation, for one of the continent's most aid-dependent countries, seems to lie with the clear threat of withdrawal of Malawi's foreign aid and donor support, pending the continued imprisonment of the couple.⁵³⁰ Monjenja almost immediately established himself with a new cisgendered female partner – many believe this was in order to avoid further public persecution.⁵³¹ Due to the seeming level of notoriety Chimbalanga had gained in Malawi, the situation was somewhat different from that of Monjeza. As Chimbalanga explains: "After I was released from prison I experienced a lot of challenges in my country. People were calling me names and it was a very difficult time for me, so I decided to run away to South Africa".⁵³² To assist in the process, Amnesty International contacted GDX. As Theron recalls:

We were very cautious to not call her transgender because that wasn't the word or the language she was using, but she was definitely saying she is a woman ... it seemed strange at the time to have like this court case where they are arguing gay/sexual orientation ... and then accepted by the community and afterwards, Amnesty is like, okay trans organisation, now you can have her.⁵³³

In October 2011, she arrived in South Africa and was eventually settled in Cape Town. Within a month of being in the country, due to a combination of international pressure and notoriety/celebrity, Chimbalanga was awarded full refugee status on the grounds of *sexual orientation*.⁵³⁴

To be Simply a Woman

Chimbalanga, assigned male, identifies as a woman. This understanding of herself is not dependent on a greater discourse or politics or anyone believing in it for it to be real. Her subject position resonates with transgender and yet she does not inhabit its discourse or politics. Two readings are possible here. The first might position Chimbalanga as

<http://www.timesonline.co.uk/tol/news/world/africa/article6974678.ece?print=yes&randnum=1262621202492>

⁵²⁹ Gevisser, M. (2010, June). Homosexuality and the battle for Africa's soul. *Mail and Guardian*. Retrieved August 16, 2015, from <http://mg.co.za/article/2010-06-04-homosexuality-and-the-battle-for-africas-soul/>

⁵³⁰ Blecher, S. (Director). (2013). *Two Men and a Wedding* [Documentary]. South Africa: CINGA Productions.

⁵³¹ Simon, M. (2010, June 9). "Same-Sex" Malawi Couple Splits. Retrieved August 14, 2015, from http://www.salon.com/2010/06/09/malawi_gay_couple/

⁵³² Chimbalanga, T. (2016). *Tiwonge's Story – Where Love Is Illegal*. Retrieved May 20, 2016, from <http://whereloveisillegal.com/tiwonges-story/>

⁵³³ Camminga, B. (2012, November 6). Interview with Liesl Theron - Director. *Gender Dynamix*. Cape Town.

⁵³⁴ Ibid.

transgender, as part of the universal, regardless of her own subject position. Indeed, in this reading Chimbalanga would simply become part of current contested universalist perceptions of transgender.⁵³⁵ The second reading would be to understand Chimbalanga as an individual “illuminating life possibility for the present” in connection to how the relationship between gender, sex and sexuality might be framed.⁵³⁶

In the latter reading, she would be troubling the very nature of the category of transgender as a universal. This would mean reading Chimbalanga’s experiences as illustrative of “times that produce cracks in the structure of homogeneity”.⁵³⁷ Chakrabarty, in offering a postcolonial critique, suggests that the reading need not be ‘either-or’ but rather that, “taken together, the two gestures put us in touch with the plural ways of being that make up our own present ... bring[ing] to view the disjointed nature of any particular “now” one may inhabit”.⁵³⁸

While Act 49 may not apply to Chimbalanga because she is ‘foreign born’, she certainly can, as other refugees and asylum seekers do, access gender-affirming healthcare in relation to it; this says something specific about the possibility of life in South Africa. The very possibility that Udogu may have imagined. As has been argued, the legislative process in South Africa, at least on paper, seemingly does not necessarily require a person to define themselves with terms like transsexual or transgender. This, coupled with the possibility of limited medical intervention and the opportunity to seek assistance from a traditional healthcare practitioner, suggests that the Act might not actually suppress local notions of, or possibilities for the expressions, of sex/gender/sexuality as has been argued by critics like Klein.⁵³⁹ Rather, when a person desires to have their sex registered as something other than that designated at birth, the possibility to have been assigned male and present as a woman, without necessarily taking on the term transgender, is theoretically a liveable and protected expression of life in South Africa. Surprisingly then, it is the imposition of language from NGOs that creates the disjuncture here, and the law that theoretically outlines possibility.

This possibility for Chimbalanga ostensibly works in terms of legal grounding but there may be wider social and cultural issues – particularly as terms like ‘transgender’ become increasingly pervasive as a way of naming within society.⁵⁴⁰ Here we find the line between

⁵³⁵ Chakrabarty, D. (2000). *Provincializing Europe: Postcolonial Thought and Historical Difference*. Princeton University, p. 108.

⁵³⁶ Ibid.

⁵³⁷ Ibid., p. 90.

⁵³⁸ Ibid., p. 108.

⁵³⁹ Klein, T. (2012). Who Decides Whose Gender? Medico-legal classifications of sex and gender and their impact on transgendered South Africans’ family rights. *Ethnoscripts*, 14(2).

⁵⁴⁰ The backlash to this visibility is evident in the number of reports by NGOs remarking on the extent of violence against lesbian and transgender people in particular. As an

the statements of Mukasa and Kheswa. Mukasa speaks a transnational language of human rights, proposing a particular visibility, while suggesting universality and, by extension, naturality.⁵⁴¹ Kheswa notes that people at a local level ‘live the lives they live’. It is donors/funders who require organisations to pass ‘better terminology’ on to constituencies, in order to make them identifiable and, by extension, part of the modern universal. For Chakrabarty, Chimbalanga may be a moment where the “limits of a discourse of history” – in this instance that of transgender – come to into view: the “signposts of ... [a] ... border”. He suggests that modern public life requires a principle of narration that can be considered rational. He adds, highlighting Mukasa here, “that this requirement for a rational principle, in turn, marks the deep connections that exist between modern constructions of public life and projects of social justice”.⁵⁴² In this case, transgender is a rational way to frame Chimbalanga’s sex/gender within the pervasive ideological construction of the gender binary. Transgender is a way to frame her corporeal sense of self. Transgender represents here the rational and universal – the T in the circulation of LGBT human rights.

The question becomes: why should Chimbalanga say she is transgender? What if bodies outside the Global North did not readily accept these terms – rational principles linking public life and projects of social justice – instead maintaining alternate language, simply refusing or feeling that being assigned male and identifying as a woman, makes one a woman? As is the case – arguably – for most people assigned female who identify as women. Why is it that Chimbalanga should – in this instance – have a gender identity framed as transgender, and assigned female people who identify as women, simply have a gender? I’d like to return here to the fact that no known asylum seeker in South Africa identifying as transgender – or who expresses gender in a way that organisations would call transgender – has ever received or applied for asylum other than on the grounds of sexual orientation. There are two possible readings of this. The first is that in providing asylum on the grounds of sexual orientation – perceiving it here as synonymous with sexuality and same sex identities such as gay and lesbian – the gender identity of applicants is overlooked, suppressed or lost. I would like to offer an alternate reading. In relation to sexual orientation, Sara Ahmed asks:

What does it mean to be oriented? ... What difference does it make what or who we are oriented toward in the very direction of our desire? If orientation is a matter of how we reside in space, then

example: Human Rights Watch. (2011). *We’ll Show You That You’re a Woman: Violence and Discrimination against Black Lesbians and Transgender Men in South Africa*. New York: Human Rights Watch.

⁵⁴¹ Kollman, K., & Waites, M. (2009). The Global Politics of Lesbian, Gay, Bisexual and Transgender Human Rights: an Introduction. *Contemporary Politics*, 15(1), p. 13.

⁵⁴² Chakrabarty, D. (2000). *Provincializing Europe: Postcolonial Thought and Historical Difference*. Princeton University, p. 110.

sexual orientation might also be a matter of residence, of how we inhabit spaces, and who or what we inhabit spaces with.⁵⁴³

In the *The First National Coalition Case* (1998), both Sacks and Ackerman clarified that sexual orientation was not meant to be read as a limiting category within the Constitution, but rather as a radical and destabilising envisioning of human difference. The meaning here arguably for Sachs/Ackerman seems to be not so much about sexuality or specific sexual identities but the orientation, the directionality, of one sex towards others.⁵⁴⁴ In essence, within the borders of South Africa, the Constitution does not deal with discrimination based on sexual orientation “as a matter of discrimination against a fixed, essentialised group named ‘homosexuals’, but ... rather focus[es] on the social and sexual practices which might mark individuals as ‘other’ because of their practices and because of their shared experience of oppression and exclusion”.⁵⁴⁵ This particular “queer” reading separates South African constitutional notions of sexual orientation from the “trajectory of its European colonial antecedents”.⁵⁴⁶ Justice Sachs, in the concurring judgement for the case, makes this understanding most explicit:

What the constitution requires is that the law and public institutions acknowledge the variability of human beings and affirm the equal respect and concern that should be shown to all as they are. At the very least, what is statistically normal ceases to be the basis for establishing what is legally normative. More broadly speaking, the scope of what is constitutionally normal is expanded to include the widest range of perspectives and to acknowledge, accommodate and accept the largest spread of difference. What becomes normal in an open society, then, is not an imposed and standardised form of behaviour that refuses to acknowledge difference, but the acceptance of the principle of difference itself, which accepts the variability of human behaviour.⁵⁴⁷

This, as with the notions underpinning Act 49, again reiterate an understanding regarding the historically-contingent nature of discourse, language and identities. This reading makes room for Chimbalanga, along with Udogu, and many others, in that while noting that transgender as a politics or identity may exist or be emergent, being/claiming/identifying as transgender is not necessary in relation to asylum. Rather it is the perception of a person’s orientation, both at the level of their own sex and towards other sexes, in combination with their gender and the assumptions made in relation to this,

⁵⁴³ Ahmed, S. (2006). Orientations: Toward a Queer Phenomenology. *GLQ: A Journal of Gay and Lesbian Studies*, 12(4), p. 543.

⁵⁴⁴ “Defined by reference to erotic attraction: in the case of heterosexuals, to members of the opposite sex; in the case of gays and lesbians, to members of the same sex. Potentially a homosexual or gay or lesbian person can therefore be anyone who is erotically attracted to members of his or her own sex” – *National Coalition for Gay and Lesbian Equality v The Minister of Justice* 1998 (12) BCLR 1517 (CC) at para 20

⁵⁴⁵ de Vos, P. (2009). From Heteronormativity to Full Sexual Citizenship? Equality and Sexual Freedom in Laurie Ackermann’s Constitutional Jurisprudence. In J. Barnard, D. Cornell, & F. du Bois (Eds.), *Dignity, Freedom and the Post-Apartheid Legal Order: The Critical Jurisprudence of Laurie Ackerman*. Cape Town: Juta, p. 13.

⁵⁴⁶ *Ibid.*, p. 13.

⁵⁴⁷ *National Coalition for Gay and Lesbian Equality v The Minister of Justice* 1998 (12) BCLR 1517 (CC) at para 134.

that presumably have led to their persecution and subsequent claim. It is an acknowledgement that people may engage in same-sex activities but may not utilise a particular given language to identify themselves in relation to this. As Ahmed notes, “the sex of one’s object choice is not simply about the object even when desire is directed toward that object: it affects what we can do, where we can go, how we are perceived”.⁵⁴⁸ Indeed, after five years of being in South Africa, after having come into contact with ‘transgender’, Chimbalanga has continued to state “I am a woman”.⁵⁴⁹

Conclusion

In comparison to the development of a transgender politics in the Global North, which initially took place within LGB organisations, the route taken by the transgender movement in South Africa and to some extent Africa has been somewhat different. It would take almost ten years from the emergence of a democratic South Africa for a movement to emerge, and when it did it was independent of any LGB organisation. Organisations like GDX stepped into an already-established, though politically vacant, category. In fact, their emergence was in some ways facilitated by South Africa’s constitutional-legal make up, in particular the attendant rights of Act 49. Although mainstream gay organisations within South Africa carried the LGBT acronym – arguably following funder mandates which were couched in that language – work done to address trans issues or needs was slim to non-existent. South African transgender NGOs,⁵⁵⁰ since their emergence, have strategically taken on a mantle of regionalism, working hand in hand with larger ‘transnational’ organisations to precipitate the development of transgender beyond the country’s borders. As Udogu’s case illustrates, the pathways created initially by LGBT activism, along with the denigration of ‘gay rights’ by religious and political leaders and the publication of this by international news media, have combined to create the perception that South Africa is a safe haven for individuals experiencing persecution. It is this network that proliferates around the politics of transgender in relation to gender identity and expression as human rights that has allowed transnational NGOs to assist gender refugees in coming to South Africa.

Transgender has certainly travelled: along the way it has gathered bodies, organisations, attendant terms, laws, repudiations, accusations and questions. It has inhabited and been inhabited, deployed and been treated with a certain amount of deference due to its Global Northern origin. Chimbalanga represents a ‘scandal’ within this travel, within the possible

⁵⁴⁸ Ahmed, S. (2006). Orientations: Toward a Queer Phenomenology. *GLQ: A Journal of Gay and Lesbian Studies*, 12(4), p. 563.

⁵⁴⁹ Gevisser, M. (2013). Love in exile. *The Guardian*. Retrieved November 6, 2015, from <http://www.theguardian.com/news/2014/nov/27/-sp-transgender-relationship-jail-exile-tiwonge-chimbalanga>

⁵⁵⁰ The list includes several other regionally-focused organisations including The Social, Health and Empowerment Feminist Collective of Transgender Women in Africa (SHE) and Transgender and Intersex Africa (TIA).

discourse of transgender. For all intents and purposes, transnational organisations and donors spoke *for* Chimbalanga – ensuring her asylum in South Africa, but also defining her identity in ways that they considered the most politically useful to the wider transnational LGBT human rights regime. Since arriving in South Africa, now well-aware of the language of trans, Chimbalanga has continued to simply state that she is a woman.⁵⁵¹ Charlie Takati, the Outreach Officer at GDX, notes that he respects her for this and says that many people respect her “as a woman and not as trans”.

South Africa offers asylum on the grounds of sexual orientation, not sexuality or sexuality orientation, however cumbersome that may sound. It is clear that transgender has come to hold some political function at the level of organisations regionally, and that in using this language they are able to communicate more clearly on a transnational level. It is also clear that, as yet, the spread of this “better terminology” may not be taken on in the ways expected, if at all, and that this language is not a necessity for gaining refugee status. Returning to Ahmed: South Africa represents a space wherein the tending towards certain objects is admissible, protected and possible. A space which suggests that one’s orientation in terms of desire and the shape of one’s body might be supported without necessarily having to use a specific discourse. Clearly, what Udogu may have imagined, and what certainly created the room for someone like Chimbalanga to come to South Africa, is the Constitution. It is this very imagining of *the variability of human behaviour*⁵⁵² that provides the possibility to embrace the Chimbalangas of the world, and many others we may not even be able to imagine yet.⁵⁵³

⁵⁵¹ Camminga, B. (2012, November 6). Interview with Charlie Takati – Outreach Officer. *Gender Dynamix*. Cape Town.

⁵⁵² *National Coalition for Gay and Lesbian Equality v The Minister of Justice* 1998 (12) BCLR 1517 (CC) at para 134.

⁵⁵³ It is arguable that the Constitution is in fact compatible with a far more pluralistic and radical/fluid notion of gender and sex than is currently envisioned by legislation such as Act 49. The Constitution is, after all, a living document. At the time of its creation, notions of sex and gender as existing in a far more fluid manner may not have been at the forefront of its creators’ minds if indeed these understandings existed at all. It is clear that Act 49 functions on the assumption that gender is unambiguous. Moreover that sex and gender exist in binary and in a correlating relationship to one another. As understandings about sex and gender evolve, the possibility remains for diversity to be read into the Constitution. A recent briefing paper presented to Home Affairs by GDX and the Legal Resources Centre (LRC) has noted along these lines “that in the context of the constitutional democracy in South Africa, limiting access to rights and services to only those who have gender identity that is “acceptable” undermines the spirit and purport of the Constitution, which requires that the State must take steps to protect, promote and fulfill everyone’s rights, which includes transgender persons” (p. 5). In light of this, they stress that the law has lagged in relation to medical and social developments regarding “thinking about gender and sex beyond the male-female/man-woman binary” (p. 21). Source: Legal Resources Center, Gender Dynamix (GDX). (2015). *Briefing Paper: Alteration of Sex Description and Sex Status Act, No 49 of 2003*. Retrieved from <http://genderdynamix.org.za/wp-content/uploads/LRC-act49-2015-web.pdf>

Chapter Three: Becoming a Gender Refugee

Gender refugees are those *who can make claims to refugee status, fleeing their countries of origin based on the persecution of their gender identity*. 'Gender refugees' are different from sexual refugees in that their issues pertain to a perceived incongruity between their gender identity and birth-assigned sex. Being transgender-identified and a refugee or asylum seeker is a relatively recent and under-researched facet of both transgender identity and refugee experience. Furthermore, understanding is limited regarding the lived experience of transgender-identified individuals in countries of origin that might force them into situations that would lead to seeking refuge. Key to both transgender and the refugee experience is the concept of migration. In relation to understandings of being a refugee – a person who has sought refuge – migration is considered to be constitutive of a physical, coerced movement, away from home, traversing borders and boundaries in an effort to reach safety.

As a more metaphorical experience, migration originated in work regarding transsexuality, and has come to be a dominant element within transgender.⁵⁵⁴ Narratives regarding migration as it pertains to transgender experience, though contested, are often linear in nature, suggesting a one-way movement.⁵⁵⁵ For Jay Prosser, this journey speaks to a leaving of a perceived location, a place of origin, in both a literal and metaphorical sense, in order to cross a border – usually physically, the border of a state, and at the corporeal level, a gendered border – into a borderland or transitional space, in order to return fully-actualised. This is a journey structured by the metaphorical 'homes' of manhood or womanhood invested in the body, at which, in transitioning, one arrives more fully. These homes also exist simultaneously as the nation state or community. This home that is theorised as being both returned-to or realised in the process of migration is a vehicle for social and political inclusion/life. Aren Azuira notes that as transgender studies has grown, a central critique to this framing has been that the predominant subject fitting the outlines of these narratives has persistently been "white, affluent, middle-class or aspiring to be middle-class".⁵⁵⁶ In relation to this, Jack Halberstam asks,

Who ... can afford transition, whether that transition be a move from female to male, a journey across the border and back, a holiday in the sun, a trip to the moon, a passage to a new body, a one-way ticket to white manhood? Who, on the other hand, can afford to stay at home, who can afford to

⁵⁵⁴ Aizura, A. Z. (2012). Transgender Travel Narratives. In T. T. Cotton (Ed.), *Transgender Migrations: The Bodies, Borders and Politics of Transition*. New York: Routledge, p. 142.

⁵⁵⁵ See: Prosser, J. (1998). *Second Skins: The Body Narratives of Transsexuality*. Columbia University Press.

⁵⁵⁶ Aizura, A. Z. (2012). Transgender Travel Narratives. In T. T. Cotton, *Transgender Migrations: The Bodies, Borders and Politics of Transition*. New York: Routledge p. 142

make a new home, build a new home, move homes, have no home, leave home? Who can afford metaphors?⁵⁵⁷

This reading of transgender is contextually bound, and is suggestive of particular ideologies regarding the body and the relationship between sex, sexuality, and gender. Furthermore, it also relies on – and is in some ways structured by – the possibility of access to gender-affirming healthcare. As transgender travels, its seamless application in contexts vastly different than those of its origin might provide different meanings for and insights about transgender as it is experienced and lived. With these understandings and critiques in mind, of migration and transgender experience, this chapter explores how, when, and under what circumstances transgender-identified individuals from countries in Africa are *made* to journey, forced to seek refuge not just elsewhere but in South Africa specifically, and what role transgender plays in relation to this.⁵⁵⁸ This chapter takes the narratives of gender refugees regarding their experiences and lives in countries of origin and considers the “complex, wide-ranging and pervasive set of phenomena” which might bring them to the decision to seek refuge in South Africa. While doing so, this chapter also considers what forced migration, becoming a gender refugee, might reveal about the complexity of transgender in this context. Moreover, what it might offer to current conceptualisations of transgender in relation to both the literal and metaphorical notions of home, migration, borders and borderlands.

Utilising Sara Ahmed’s understanding of the stranger as an embodied other, a *somebody*, already known and visible within the nation space, this chapter argues that gender refugees and asylum seekers, most frequently those assigned male/boy at birth who express any form of femininity (but not limited to this), experience varying levels of exclusion and questioning from a young age regarding their visible gender transgressions. It is important to note at the outset that the lives of gender refugees prior to leaving countries of origin do not form a singular narrative; rather there are multiple stories here with common elements. Drawing on the work of decolonial theorist Gloria Anzaldúa and her perceptions regarding borderlands, this chapter argues that the hyper-visibility of gender-transgressive individuals is not simply about gender, it is also about their perceived sexuality. Moreover, that it is a cumulative set of experiences – leading to the threat of social, political and civil death – that causes a transgender-identified person to flee their country of origin. Anzaldúa offers a way to frame these particular transgender experiences, to understand the possibility of resistance to control and domination and a means through which to consider the link between the trans imaginary and South Africa.

⁵⁵⁷ Halberstam, J. (1998). *Female Masculinity*. Durham: Duke University Press Books, p. 164.

⁵⁵⁸ Brah, A. (1996). *Cartographies of Diaspora: Contesting Identities*. London and New York: Routledge.

Gendering the Body – ‘What’/‘It’

I fled my home after my mother tried to inject me with a syringe full of gasoline when she discovered that I was gay. After leaving my mother’s house, I began living with my father and I attended ... University ... During this time, my father saw a picture taken of me kissing another man. After confronting me, my father and mother forced me into a “healing process” run by a pastor. I was made to fast for days in order to expel the “devil spirit” out of my body. When I did not change my behaviour, my father spread the news of my homosexuality to the community. Local boys began to beat me. I was particularly weary of a notorious group that hunted homosexuals. My friends and family shunned and banished me. My life was in danger and I had nowhere to go, so I came to South Africa.⁵⁵⁹

Alex left Central Africa at the age of twenty-three, having known for much of their⁵⁶⁰ life that something about them set them apart from their peers. Their short description of experiences leading up to their coming to South Africa, highlights several threads which cumulatively play a significant role in becoming a gender refugee: family, society or community, homosexuality, violence – seemingly free of impunity – and finally the threat of death. In looking back at their childhood they recall what they now see as moments of “discrimination” – being taunted by local children, questioned by adults regarding their gender and feeling as though they were somehow different. They attribute much of this behaviour on the part of their community to being a reaction to the way they looked, spoke and walked – all of which had a distinctive femininity and were eventually perceived as indicative of homosexuality. Initially, as a child, in instances of being teased, they would go and tell their mother who would then affirm her child’s assigned gender. For Alex, though, the feelings surrounding these incidents were far more complicated:

I start feeling that I am not normal ... I start asking myself ... ‘why am I like this?’ ... You know if you want to play with girls they say no you not a girl you a boy. If you want to go play with the boys they say no you not a boy you look like a girl. So I was just like in the middle. I can go tell my mother this is what happening, my mother can go shout to these people, ‘Why you calling my child names? Why you doing this to my child? He’s normal, he’s a boy’.⁵⁶¹

A commonality in the lives of almost all participants, most often heard for the first time in their formative years, has been this question of whether they are a boy or a girl. This is not a line of questioning that requires an answer; rather, it is a statement presenting the early borders of personhood and belonging at several intersecting levels but most importantly gender/sexuality. Gender is imposed on an individual largely based on their perceived biological sex; it is compulsory and within this system, we “choose neither our marks nor the meanings they carry”.⁵⁶² In the moment of being ‘girled’ or ‘boyed’, the body

⁵⁵⁹ Alex

⁵⁶⁰ Alex’s preferred pronouns are they and them.

⁵⁶¹ Alex

⁵⁶² Stryker, S. (2006). My Words to Victor Frankenstein Above the Village of Chamounix. In S. Stryker & S. Whittle (Eds.), *The Transgender Studies Reader*. New York: Routledge, p. 253.

is attributed a subjectivity. For Judith Butler, medical interpellation from the time of birth “shifts an infant from an ‘it’ to a ‘she’ or a ‘he’, and in that naming the girl is ‘girled’, brought into the domain of language and kinship through the interpellation of gender”.⁵⁶³ This founding interpellation is then reiterated throughout their lives. When a child contests this by not ‘boying’ or ‘girling’ as expected, they begin to trouble “that field of discourse and power that orchestrates, delimits, and sustains that which qualifies as ‘the human’”.⁵⁶⁴ Stella and Ava, assigned male at birth, are from East Africa while Tatenda is from a country bordering South Africa. Each, as with Alex, attest to the experience of this injunction and their own reactions in early childhood.

Stella:

The community ... asked me everywhere I go, ‘are you girl? Are you boy?’ and for me it was very confuse.⁵⁶⁵

Tatenda

People would say ‘is this child of yours a boy or a girl? And she (mother) would explain to people that it’s surprisingly really because ... when she was still pregnant she knew by instinct that she was carrying a daughter and she used to buy all these girls clothes for me ... to await my arrival.’⁵⁶⁶

Ava

If you could see me when I was little, people used to get confused, ‘are you a boy or a girl?’ It was something that was good because I used to like it when people would see me as a woman, not as a man but it was also something bad in a boarding school because other guys would bully me.⁵⁶⁷

The logic of the injunction is made clearest when Alex is told they cannot play with anyone because they are *not a girl* but they are also read as *not a boy because they look like a girl*. For gender refugees from African countries, these situated realities represent a specific geo and body politics and are epistemically important. This suggestion in relation to their shifting often provides the first words or inklings that something is strange and that this strangeness is visible to others. The questions they encounter as children are not directed at *who* they are but rather, more crucially, *what* they are – a question of their humanness. Sara Ahmed in *Strange Encounters*, posits that the stranger is one who is already known, someone who is recognised but, critically, this is an identification of “*somebody*” who is perceived as being out of place.⁵⁶⁸ This is not someone that society fails to recognise; rather it is a person, a body, that is differentiated from others within a visual

⁵⁶³ Butler, J. (1993). *Bodies That Matter: On the Discursive Limits of Sex*. New York: Routledge, p. 7.

⁵⁶⁴ Ibid., p. 8.

⁵⁶⁵ Stella

⁵⁶⁶ Tatenda in Dolan, C., Chapman, A., & Neumann, D. (Directors). (2011). *Getting Out* [Documentary]. Refugee Law Project.

⁵⁶⁷ Ava

⁵⁶⁸ Ahmed, S. (2000). *Strange Encounters: Embodied Others in Post-Coloniality*. New York: Routledge, p. 21.

hierarchy on the basis of how they appear.⁵⁶⁹ Akraam, also assigned male at birth, from a country in the Horn of Africa, acutely recalls this differentiation through the naming practices of neighbourhood children, based on her appearance – in particular, in relation to her feminine hand gestures:

They used to call me 'ladyboy' and when my mother heard that she used to cry. Yes, she used to cry. They never used to call me my name.⁵⁷⁰

For Akraam, Alex, Tatenda and Stella this act of differentiation through naming was something that alerted them to their difference. To the possibility that although they did not have the word for it at the time, as Alex explains, that they were 'transgender'.⁵⁷¹ What I am suggesting here is that gender non-conforming individuals present visible signs of incongruence that raise questions, trouble the initial interpellations, that shifted them from 'it' back towards the space of 'it'. Key here is this *shifting*, a state of movement or migration. This naming that takes place, as with Alex's experience, raises the boundary of what is normal; in naming and in being questioned they are set aside, recognised as somehow falling outside of this space. Ahmed argues that perceived cultural difference is an anxious space where social boundaries are reinforced. It is this initial reading of 'not normal' that carries the threat of expulsion from homes, communities, families and even nation spaces.

The Family Home

Notably, as seen with Tatenda and Alex, not all families read their children's incongruence as immediately problematic; not all homes carry the danger of expulsion – some not initially and some not ever. Within some families, mothers in particular show a certain level of acceptance, allowing their children to dress as they please. Nelly, assigned male at birth, from Southern Africa, recalls the wearing of 'high shoes' or a week of unbridled access to their sister's clothes being offered as a reward for doing housework or chores by their parents:

As I was growing up my parents knew in fact that I was gay, because I used to put on my sister's shoes my mother's wigs, she would ask me to do something, if I refused she would say "ah I will let you wear my shoes or sister's clothes". Then I would do it. She would ask me maybe because I am a tiny person. She will ask me, go clean my bedroom then I would do that and after that she would say, "You can put on these shoes for a week".⁵⁷²

Crucial here is Nelly's explanation, to which I will later return, that her parents read her desire for "girls'" clothes as sign that she was gay. Regardless, instead of curtailing her

⁵⁶⁹ Ahmed, S. (2000). *Strange Encounters: Embodied Others in Post-Coloniality*. New York: Routledge, p. 21-22.

⁵⁷⁰ Akraam

⁵⁷¹ Alex

⁵⁷² Nelly

behaviour or berating her for it they all but facilitated it. In a similar manner, Bobbie, also from Southern Africa, explains how her mother would often buy her girls' shoes or 'high shoes':

My mother used to tell me when I was a kid when we went shopping, me I used to cry for high shoes, and my mother ended up saying, "let me just buy shoes for him because he is crying" ... even at school those civvies days, we don't go with uniform ... me I used to dress like a woman.⁵⁷³

Not all parents actively facilitate their children's non-conformity, but some parents do turn a blind eye. Akraam distinctly remembers desiring girls' clothes as a child, which she often stole from her sister. Raised in a strict Muslim household she was aware of the severity of this transgression. Regardless of this and the fact that her body was too big for her sister's clothing, meaning she often burst the seams, like Bobbie, she continued to "dress like a woman" at home. Akraam believes her mother knew that she was different from other boys and that she was the one destroying her sister's clothes. While she did not endorse Akraam's behaviour, she did not sanction it either; rather, it was simply never mentioned. As a child, Tatenda felt that her non-conforming gender behaviour was a topic of surveillance for her father, her community, and her school. She was acutely aware that there was something about her that was intrinsically read as disruptive to the heteronormative order. It was only sanctioned as soon as she was old enough to understand that if she was a homosexual her father would disown her. Critically, like Akraam, something about the way Tatenda navigated the world as a child was read as a sign of an implicit sexuality.

While families can certainly function as homes or holding spaces for their children's burgeoning gender expression/sexuality, schools played a particular role as a site of discipline in the lives of many of participants. They are places where non-conformance is called out, taunted and made a spectacle of. Tatenda recalls a teacher telling her to go visit the staff room so that she could be taught by a male teacher how to walk, ostensibly like a man, and to touch a girl. In essence, to be taught how to be a man by enacting proper masculinity and heterosexuality. Certainly, most of the participants learnt from a young age that their behaviour was at odds with wider societal expectations, but, returning to injunctions about the 'what' of who you are, Akraam also notes that her problems only really began when she had to go to school.

At school it was more than the dressing. When the teacher used to always tell me, "don't put your hands out when you talking. Be like a real man!" ... He used to tell me to put my hands like this ... [masculine gesture] ... and he beat me here with a stick to stop it.⁵⁷⁴

⁵⁷³ Bobbie

⁵⁷⁴ Akraam

Her femininity became a clear site of derision and a sign that it was something that she was doing (as opposed to simply something she was wearing), over which she felt she had no control, that was being read as undermining and problematic. This kind of disciplining was ostensibly done in front of other children, as Stella suggests, although evidently unlike the others, she made no attempt at suppressing herself:

When I go to school I put eyebrow, and the Vaseline and the powder just like that. And when I go to school sometime the teacher was very difficult to me and the teacher 'why you look like woman? You are man?' 'My teacher, I'm like that'. My teacher says, 'ah'. Sometime in my country he was like to say 'pede' ... 'are you pede?' ... how he pronounce it was not good.⁵⁷⁵

For Tatenda, reflecting the vulnerability to violence, this public berating was doubly demeaning in that not only did she feel an excessive visibility, but also, this visibility was linked to something with which she did not identify – being gay.

According to the community (in country of origin) and my family I was a gay man, and they treated me as a gay person which I was not. So the impact was huge and painful because first of all I am treated for who I am not and secondly they are expecting me to be who I am not ... If someone hits ... me I cannot go and report it the police because the law does not allow gay people ... so they had that strength to say whatever they wanted to me or my parents. They had that strength to hit me in the road if they want to. They had the strength to manhandle me if they want to because they know you cannot go anywhere with it.⁵⁷⁶

Within Ahmed's framework of strangers and estrangement, recognition based on appearance allows for naming to take place – *Ladyboy* or *Pede* or *Gay* – which signifies that body as unwelcome or out of place, particularly in the social space. These are the beginnings of exclusion and the seeds of marginalization. This initial questioning, a visibility in childhood, develops into a kind hyper-visibility as they grow older – a visibility in excess – "when it is impossible to pass unnoticed".⁵⁷⁷ Given the prevalence of transgender-identified women, like, Akraam, Stella and Tatenda, in terms of gender refugees in South Africa, this hyper-visibility seems to be particularly true, but not isolated to those that eventually come to identify as women or express femininity. It is in adulthood that these initial issues become more pressing. Cleo provides some insight into the possible reasons for this:

⁵⁷⁵ Stella

⁵⁷⁶ Tatenda in Ntluli, B. (Executive Producer). (2011, October 20). *The Stories of Several LGBTI Africans Persecuted for Being born LGBTI*. Special Assignment. South African Broadcasting Corporation [Television programme]. Retrieved from <http://oiilinternational.com/1982/south-african-broadcasting-corporation-special-assignment-20-october-2011/>

⁵⁷⁷ Moreno, A. (2008). Open Space: The Politics of Visibility and the GLTTTBI Movement in Argentina. *Feminist Review*, 89, p. 140.

For a man to dress up as a woman with a patriarchy that is our culture ... it is like degrading themselves to a woman ... like what is wrong with you? You are shaming all the men ... You are such a loss to humanity.⁵⁷⁸

Cleo points here to the slippage that gender non-conformity maintains into adulthood out of the zone of the human, to Butler's 'it'. She also suggests a link to expectations of heteronormative rightness in relation to both masculinity and patriarchy. This distance from the norm or expectation becomes heightened as participants age and have to engage more frequently with wider society and community outside the familial home. As Arthur, a trans man from Southern Africa, explains:

The older I became, I could see that the society was expecting me to become a certain person and what not ... Like my family was saying that I'm not normal, I'm crazy.⁵⁷⁹

Not anyone can be a stranger, Ahmed argues "some-bodies are more recognisable as strangers than other-bodies precisely because they are already read and valued in the demarcation of social spaces".⁵⁸⁰ Alumine Moreno considers the politics of this hyper-visibility in relation to the expectations of society with regards to trans people in Argentina, explicating that "one of the negative consequences of visibility is that once the distance from the norm ... becomes notable in hostile environments, the individuals identified as deviant become vulnerable to different forms of violence".⁵⁸¹

Society and Community

For Vivian Namaste, gender expression can be considered the foremost signal used to locate lesbians and gay men within a given society.⁵⁸² In instances of violence involving individuals perceived as 'homosexual', it is glaringly evident that the possibility of attack is justified "not in reaction to one's sexual identity, but to one's gender presentation".⁵⁸³ This is not to say that sexuality does not enter the question but rather that it is the gender presentation that triggers the possibility of violence; indeed, would-be attackers do not "characteristically inquire as to the sexual identity of their potential victims, but rather make this assumption on their own".⁵⁸⁴ Again, this is not to say that it is simple to separate what is

⁵⁷⁸ Transgender in Africa: The great divide. (2013, July 17). Transgender in Africa: The great divide. *Mail and Guardian*. Retrieved May 15, 2015, from <http://mg.co.za/multimedia/2013-07-16-transgender-in-africa-the-great-divide/>

⁵⁷⁹ Arthur

⁵⁸⁰ Ahmed, S. (2000). *Strange Encounters: Embodied Others in Post-Coloniality*. New York: Routledge, p. 30.

⁵⁸¹ Moreno, A. (2008). Open Space: The Politics of Visibility and the GLTTTBI Movement in Argentina. *Feminist Review*, 89, p. 140.

⁵⁸² Namaste, V. K. (2000). *Invisible Lives: The Erasure of Transsexual and Transgendered People*. Chicago: University of Chicago Press, p. 141.

⁵⁸³ Ibid., p. 140.

⁵⁸⁴ Ibid., p. 140-141.

gender and what is sexuality – the one often stands in for the other; they intersect in significant ways and are more often than not collapsed into one another. Namaste, in reflecting on the question of the relation between gender and sexuality, adds that in certain “social, cultural, and historical contexts”⁵⁸⁵ their separation might actually be impossible. This is partly due to the fact that in these instances, “gender is not simply mistaken for sexuality or vice-versa; the two are read through one another and constitute each other’s logic”.⁵⁸⁶ This is the logic that is drawn on in order to ascertain the outsider within. This logic seems to be particularly true for the countries and communities from which participants hail, where homosexuality is the most common term deployed to signal their difference, regardless of self-identity. Victor Mukasa was one of the first ‘high profile’ transgender-identified activists to seek refuge in South Africa in the mid 2000s. He explains the overlap between these perceptions of homosexuality and gender within communities:

Generally, all gender non-conforming people are “automatically” branded homosexuals as in most of our communities, a man who looks or has tendencies of a woman is the proper picture of a gay man. In the same way, a woman who looks like or has tendencies of a man is declared a lesbian automatically. So in our communities, many trans people have been kept blind to gender identity issues and have themselves, many times, referred to themselves as just homosexual.⁵⁸⁷

In societies where the notion of transgender or a language for gender transgression or non-conformity does not exist within the wider public realm, those that present in ways read as outside heteronormatively-aligned sex roles are immediately considered to be homosexual. As with Tatenda and her father, or Alex and their parents, this becomes a space of anxiety and a reason for surveillance and correction. For the majority of participants, their gender expressions were experienced as a source of unavoidable derision and belittling in their countries of origin, most often when they left the family home and entered social spaces – particularly disciplinary social spaces such as schools. For many, the fact that this not only brought them into visibility, but also situated them within a discourse of homosexuality and abjection with no recourse to protection was extremely traumatising. Being recognisably homosexual then, it seems, is often framed by heteronormative assumptions of wanting to be a woman or of being *not a boy* but looking *like a girl*, of being not a man and therefore being less than a man but never actually being a woman.

Julius Kaggwa, a leading intersex activist from Uganda, explains that issues of sexuality in most parts of Africa are things that societies would prefer were silenced, or at best

⁵⁸⁵ Ibid., p. 138.

⁵⁸⁶ Lambie, S. (2008). Retelling Racialized Violence, Remaking White Innocence: The Politics of Interlocking Oppressions in Transgender Day of Remembrance. *Sexuality Research and Social Policy*, 5(1), p. 32.

⁵⁸⁷ Mukasa, V. and Balzer, C. (2009). People Have Realized the Need for an African Trans Movement. *Liminalis*, 3, p. 124.

“addressed only through stigmatising sensational media exposure”.⁵⁸⁸ He relates this attitude to a broader ingraining of patriarchy and heteronormativity – both reliant on a deep-rooted societal belief in fixed identities. Recognising sexuality, let alone gender, as something diverse is almost unfathomable, a “destructive and an immoral part of human experience that must be kept in check”.⁵⁸⁹ Cleo echoes Julius, adding that this issue of fixity can be particularly pernicious when it comes to presenting in ways that trouble these expectations:

Though African culture is not something you would look at as homogeneous, definitely the cultures are quite different but we are people who don't really talk about sexuality. ... Issues to deal with gender are, for lack of a better word, almost rigid ... anything that tries to change or *shift* that is really seen with a lot of negativity and you bound [sic] to face a lot of backlash.⁵⁹⁰

Hyper-visibility does not always necessarily provoke a negative response from communities, though. For Tricia and Bobbie, this hostility was certainly ever-present, but only when they moved beyond their own communities. Living in singular, close-knit communities throughout their adolescence meant that there was a certain undeniable visibility regarding who they were – as Tricia explains, she had always looked “like a little woman”. This outward display of femininity established a certain knowledge within both of their families and communities, which extended to a tacit acceptance on the part of these communities. Bobbie notes how this community acceptance or act of witnessing to their ‘always having been this way’ provides a certain level of protection, but this protection has very clear limits.

At first obvious [sic], it was difficult, but they (the community) can't change me. They end up understanding now that “she is like that”. It's like sometimes when you've grown up in the same area, people they end up understanding you. They end up knowing you. Like, “this one, she is like this,” and then you don't have a problem ... to stay in another location it will be a disaster. When you go outside it's not safe. Even this other friend of mine she was staying at a different location when she is coming to visit me these people they shout...⁵⁹¹

In some cases – as with Tricia, when new trainee police officers entered her community – this even functioned as an injunction against the seemingly standard practice of police harassment of those perceived to be homosexual.

⁵⁸⁸ Kaggwa, J. (2011). Intersex: The Forgotten Constituency. In S. Tamale (Ed.), *African Sexualities: A Reader*. Cape Town: Pambazuka Press, p 233-234.

⁵⁸⁹ Ibid.

⁵⁹⁰ von Wallström, J. (Director). (2015). *Have you had to Convince People You're a Transgender Woman? - Episode 5*. [Online Mini Documentary]. Video posted to <https://youtu.be/IIZjUpUyxPA>

⁵⁹¹ Bobbie

These new people they ... don't even know me. They don't understand what I am, they try to harass me but some of the cops they tell them to stop. They tell them that they know this person. "He was born like this", "he was born in this country" and "he grew up in this area".⁵⁹²

In every instance, for every participant, gender-transgressive behaviour was read as indicative of homosexuality, but evidently communities like families differ in their approaches and responses. Harassment or bullying – whether in schools or on the street – was a common experience but it is Tricia's interaction with local police that provides a crucial clue as to how transgender-identified individuals might become gender refugees – in that her protection as a human being from harassment was not a given.

The Role of Transgender

In the context of these participants' experiences within various countries situated in Africa, transgender – as has been noted – is often read through the concept of 'homosexuality' or as the epitome of what it means to be gay. 'Transgender' was something that participants identified with to varying degrees; the ability/inclination to take on the term shifted from person to person. As has been argued in the previous chapter in relation to Tiwonge Chimbalanga, there are also instances where the term has been refused. However, this refusal has by no means barred it from being ascribed to Chimbalanga by other people. In this case, Chimbalanga is the exception, a point to which I will return. For the rest of the participants, several commonalities exist in relation to their identification with transgender. They were all desirous of the same sex but always felt that the notion of homosexuality, or homosexuality alone, was not enough to explain their felt sense of self. Participants utilised an amalgamation of both gay and transgender to describe themselves, along with several other terms: ladyboy, sis, gender non-conforming, a butch, lesbian, transgender, sex changers, drag queen, tom girl, and complete woman. It was rare for participants to identify as only transgender, and in these cases they often preferred to identify as simply women or men, with transgender signifying a specific time period or transitional stage in their lives.

For Aren Aizura, the most persistent trans narrative associated with being transgender tends to focus on transitioning as a key facet, framing this journey as a "'coming home' to one's new body – the body one also always should have been".⁵⁹³ Jay Prosser, in his book *Second Skins: The Body Narratives of Transsexuality*, explains this as the 'trans' trajectory.⁵⁹⁴ Although Prosser was – in his initial analysis – addressing transsexuality and the narrative of

⁵⁹² Tricia

⁵⁹³ Aizura, A. Z. (2012). Transgender Travel Narratives. In T. T. Cotten (Ed.), *Transgender Migrations: The Bodies, Borders and Politics of Transition*. New York: Routledge, p. 142.

⁵⁹⁴ Prosser, J. (1998). *Second Skins: The Body Narratives of Transsexuality*. Columbia University Press.

being ‘trapped in the wrong body’, there has been some slippage between this and current perceptions of transgender. For Nael Bhanji, these narrative productions have largely established passing as ‘properly gendered’ as something akin to coming home, an articulation of “linear progression towards the ultimate goal of belonging”.⁵⁹⁵ At the heart of these accounts is the synchronisation of “the metaphorical return to the protagonist’s gendered home with an account of their arrival at the protagonist’s *literal* home”.⁵⁹⁶ For Bhanji and Namaste, these types of narratives are indicative of an unspoken white privilege within ‘Anglo-American’ framings of transgender.⁵⁹⁷ Aizura reads this journey to ‘home’ as framed by the notion of ‘from’ and ‘to’, denoting a one-way trajectory from one pole of dichotomous existence to the other, “divided by the border or no man’s land in-between”.⁵⁹⁸ Moreover,

The transitional journey itself is merely a link between locations - a sort of gendered non-zone between origin and destination – and not a place to call home. Thus the prefix *trans* signifies multiple crossings, but still within a very confined nexus of homecoming and belonging, of borders and centres.⁵⁹⁹

Crucially, Aizura adds, these types of narratives often work to foreclose the possibility of multiple interpretations of transgender, in that they contain or project “indeterminacy” into an elsewhere space that is to be returned from as ‘properly gendered’ in the right body.⁶⁰⁰ The notion of a wrong body describes embodiment “in terms of an error of nature whereby gender identity and biological sex are not only discontinuous but catastrophically at odds”.⁶⁰¹ The rhetoric of linear migration to home assumes that the solution or the necessary outcome of what has been framed as wrong embodiment is to move to right embodiment. Halberstam reflects this critique, noting:

Rightness may [as] easily depend on whiteness or class privilege as it does on being regendered. Who we might ask can afford to dream of the right body? Who believes that such a body exists? Finally as

⁵⁹⁵ Bhanji, N. (2012). TRANS/SCRIPTIONS: Homing Desires, (Trans)sexual Citizenship and Racialized Bodies. In T. T. Cotten (Ed.), *Transgender Migrations: The Bodies, Borders and Politics of Transition*. New York: Routledge, p. 166.

⁵⁹⁶ Aizura, A. Z. (2012). Transgender Travel Narratives. In T. T. Cotten (Ed.), *Transgender Migrations: The Bodies, Borders and Politics of Transition*. New York: Routledge, p. 142.

⁵⁹⁷ Bhanji, N. (2012). TRANS/SCRIPTIONS: Homing Desires, (Trans)sexual Citizenship and Racialized Bodies. In T. T. Cotten (Ed.), *Transgender Migrations: The Bodies, Borders and Politics of Transition*. New York: Routledge, p. 158.

⁵⁹⁸ Aizura, A. Z. (2012). Transgender Travel Narratives. In T. T. Cotten (Ed.), *Transgender Migrations: The Bodies, Borders and Politics of Transition*. New York: Routledge, p. 140.

⁵⁹⁹ Bhanji, N. (2012). TRANS/SCRIPTIONS: Homing Desires, (Trans)sexual Citizenship and Racialized Bodies. In T. T. Cotten (Ed.), *Transgender Migrations: The Bodies, Borders and Politics of Transition*. New York: Routledge, p. 162

⁶⁰⁰ Aizura, A. Z. (2012). Transgender Travel Narratives. In T. T. Cotten (Ed.), *Transgender Migrations: The Bodies, Borders and Politics of Transition*. New York: Routledge, p. 142.

⁶⁰¹ Halberstam, J. (1998). *Female Masculinity*. Durham: Duke University Press, p. 143.

long as migration and borders and home remain metaphorical figures within such discourse, transsexuals and transgendered people who actually are border dwellers ... or who really have migrated from their homelands never to return must always remain just outside discourse, invisible and unrecognised, always inhabiting the wrong body.⁶⁰²

Within this specific, rarely-acknowledged, contextual perception of transgender existence, to “live successfully in the gender of choice, to be accepted as a *natural* member of that gender” is described as ‘passing’.⁶⁰³ ‘Passing’ generally requires access to gender-affirming healthcare, such as hormones and perhaps surgeries. These notions of passing presuppose both desire for, and access to, the necessary surgical and medical means to do so, whether immediately or eventually. In societies such as the ones participants come from – where hormones have to be sought illegally and the chances of the existence of medical intervention of any kind are highly improbable – passing is not a choice: it simply does not exist. If passing is eliminated as an option then, in the majority of cases, one can only read or – as Moreno describes – experience a visibility in excess: “when it is impossible to pass unnoticed”.⁶⁰⁴ While Halberstam acknowledges that many trans people transition in a clearly linear manner, leaving “geographies of ambiguity behind”,⁶⁰⁵ many simply cannot pass, cannot afford to pass, have no desire to pass and so make their home where they can.⁶⁰⁶ For Halberstam, the concern becomes how to acknowledge those narratives which perhaps hold the power to disrupt the dominant perception of trans experience.

In thinking about the intersection between the meaning of transgender to participants and the experience of migration as something which is forced, the possibilities of home and borders as metaphor shift. Indeed, the experiences of gender refugees in living in, and eventually leaving, their countries of origin, necessitate the literal use of what Halberstam notes have been “metaphorical figures”. In so doing, the possibility for a different sort of trans travel narrative, one that might engage with “indeterminacy” and “border dwellers” is presented. Transgender, in this case, with these participants, provides a means through which to understand gender, and the precarious nature of perceptions regarding the geopolitically situated body. Without the strictures of a clear linear narrative, the meaning of transgender in this context is prised open. Returning to Chimbalanga, transgender can also become something that is refuted, even though the elements of a lived experience may fulfil what would be considered constitutive of that experience. This version of transgender, as it applies in this context, speaks to multiplicity – the possibility and construction of multiple

⁶⁰² Ibid., p. 172.

⁶⁰³ Stone, S. (2006). The “Empire” Strikes Back: A Posttranssexual Manifesto. In S. Stryker & S. Whittle (Eds.), *The Transgender Studies Reader*. New York: Routledge, p. 231.

⁶⁰⁴ Moreno, A. (2008). Open Space: The Politics of Visibility and the GLTTTBI Movement in Argentina. *Feminist Review*, 89.

⁶⁰⁵ Halberstam, J. (1998). *Female Masculinity*. Durham: Duke University Press, p. 163.

⁶⁰⁶ Ibid.

homes, which might include the borderland and the possibility of an imaginary as a nation space or a home situated as a physical elsewhere, a place of freedom, not returned to, but arrived at.

Borderlands

Gloria Anzaldúa describes a borderland as “a vague and undetermined place created by the emotional residue of an unnatural boundary where the prohibited, the forbidden ... reside in a place of discomfort as they negotiate between the conflicting forces in such margins”.⁶⁰⁷ Discomfort is the crucial analytic here – something constantly expressed by participants, which I believe begins to explain what it might be like to inhabit “geographies of ambiguity”.⁶⁰⁸ Nelly explains what it was like to live in her country of origin, feeling constantly watched in her attempts to perform an adequate masculinity that would mask her desire to enact femininity:

I was not comfortable really as I was living there ... It was very hard [trying to hide her gender and present as a man] because I was forced to speak in a voice that wasn't mine, to walk in a step that wasn't mine. To put on clothes that I wasn't comfortable with ... I still haven't come over the situation that I went through back home where people would call me names where people would stare at you where people would say “look at that one look at that one”. I didn't feel comfortable.⁶⁰⁹

The wrong-bodied narrative can be critiqued for ascribing right bodied-ness to everyone else, “suggesting a fiction of proper and normal genders ... leaving stable gender identities, and therefore stable gender hierarchies, intact”.⁶¹⁰ This would suggest that the problem is with the individual: as Nelly's comment augurs, it erases the possibility or radical suggestion that heteronormative environments, feelings of constant surveillance, lack of community support, misnaming, various forms of violence (tacitly State-sanctioned), work as a matrix of suppression and deprivation, leaving transgender-identified people constantly ill at ease. For Nelly, being forced to behave in ways that did not align with her understanding of self in relation to her environment, and her heightened visibility, led to her discomfort.

Anzaldúa speaks about ‘mestiza’, a term which can be understood as “torn between ways” of being in discomfort, to generate an epistemology of the borderlands.⁶¹¹ This borderland space is an “unstable, unpredictable, precarious, always-in-transition space lacking clear boundaries ... living in this liminal zone means being in a constant state of

⁶⁰⁷ Aigner-Varoz, E. (2000). Metaphors of a Mestiza Consciousness: Anzaldúa's Borderlands/La Frontera. *Melus*, 25(2 Latino/a Identities), p. 49.

⁶⁰⁸ Halberstam, J. (1998). *Female Masculinity*. Durham: Duke University Press, p. 163.

⁶⁰⁹ Nelly

⁶¹⁰ *Ibid.*, p. 162, 171.

⁶¹¹ Anzaldúa, G. (1987). *Borderlands La Frontera: The new Mestiza*. San Francisco: Aunt Lute Books, p. 78.

displacement – an uncomfortable, even alarming feeling”.⁶¹² She argues that individuals who live in the borderlands – physically, epistemologically or ontologically – negotiate several conflicting cultural representations and social expectations with regards to both who they are and *what* they are expected to be. Tom elucidates the affective condition of being transgender:

It was painful not to express how you feel. It was painful not to tell who you are, it was painful. It was expensive to accept whatever comes along because that's what people expect from you and the society I was living in was purely Christian ... I could sometimes go to church and cry so much and pray so much and I felt like dying because I felt like I was living in two different worlds. This side and this side.⁶¹³

For Victor, as with Nelly's experience, these discomforts are directly linked to being transgender in societies that perceive it as something monstrous.

While still with my parents, I was always beaten by my father for “behaving” like a boy. In school, the same story. While peeing one day my neighbour's daughter found me peeing while squatting and she screamed like she had seen a monster. I became the laughing stock of the village and I expelled myself because of the humiliation. I could speak the whole day about the discomforts I have suffered in life more because I am a transgender person.⁶¹⁴

The epicentre of Anzaldúa's borderland theory is a space of hybridity, resistance and multiplicity. In essence, the borderland makes room for the kind of transgender existence espoused by participants. The mestiza consciousness is the coming-to-the-fore of an agency, an acknowledgment of outsider-status and an unwillingness simply to be dominated, exploited and abused. This agency speaks to self-definition, survival and the creative evasion of death. It also speaks to an embodiment of stranger-ness and a recategorising of the notion of home. As Tatenda explains about her own coming to consciousness:

When I was 16 I really knew what I wanted and I knew I wanted to, I was a woman and if I was going to even have a relationship it was going to be with a boy because I am a girl. So to that extent that was when I realised I had to find a way to get away because these people were not going to stop and I was not going to stop either. So it meant one of these two had to make a decision and leave and that was me obviously.⁶¹⁵

The mestizo consciousness is a questioning of the right to draw definitional lines of belonging. Victor, who uses the term lesbian transgender, elucidates his relationship with transgender:

I hear people say [you can't be a lesbian if you are a trans man] such things but for me that doesn't matter because for me my identity is my identity. It's about me, it's about my life and so because at

⁶¹² Anzaldúa, G. (2013). (Un)natural Bridges, (Un)safe spaces. In *This Bridge We Call Home: Radical Visions for Transformation*. New York: Routledge, p. 1.

⁶¹³ Tom

⁶¹⁴ Mukasa, V. (2006, July 12). *On Transgender Human Rights Issues in Africa*. Retrieved May 9, 2014, from <http://pambazuka.org/en/category/comment/38727>

⁶¹⁵ Tatenda in Dolan, C., Chapman, A., & Neumann, D. (Directors). (2011). *Getting Out* [Documentary]. Refugee Law Project.

some point I was told 'you just don't want to live the lesbian life, the lesbian community' and I said no but I belong there. I also had a part in building the lesbian community in Africa and I love being there and I have aspects of me that qualify me to be a lesbian. I have heard others saying that a transgender lesbian is a man, a biological man who now transitions into a female and is attracted to women and I said wait a minute I am a bio women but for me I have decided to redefine this to make a meaning to me and for me it means exactly what you see – a lesbian transgender, period.⁶¹⁶

Anzaldúa argues that in the borderland space a person develops the ability to cope by “developing a tolerance for contradictions, a tolerance for ambiguity ... sustain[ing] contradictions”.⁶¹⁷ Those that find themselves pushed into the borderlands are often open to exploitation, extreme exclusion and marginalization. If, from childhood, it is made clear that something is not quite right with participants' behaviour, then they are set at the border of what is perceived to be correct by some families, communities and the state. Dwelling in entanglement, this is a constantly shifting process between acceptance and marginalization. Returning to Butler's understanding of bodily subjectivity, 'shifting' here is key. It is a way to describe this life in the borderlands as constantly about evasion, resilience, adjustment and survival. There are any number of ways of shifting – between spaces, between homes, between borders and between nations. Coming back to Prosser, this is not a 'trans trajectory': for trans people as exilic subjects, 'traveling' or, as I argue, shifting “is a strategy for living with the exilic condition”.⁶¹⁸ Giorgio Agamben's idea of bare life is useful here. Agamben sets up *homo sacer* as an exemplary figure of the state of exceptionalism, the individual set apart from others by law. Like Anzaldúa, Agamben notes that “lives lived on the margins of social, political, cultural, economic and geographical borders are lives half lived ... these lives exist in a limbo-like state that is largely preoccupied with acquiring and sustaining the essentials of life”.⁶¹⁹ Although the same ideas could be read from the journeys of all participants, Sasha perhaps provides the clearest narrative of what it means to survive in a limbo-like state, shifting as and when necessary, abandoning home in its physical manifestation and navigating borders both physically and metaphorically whilst being precariously visible.

[When] ... I left that house I had a chain which was gold ... so it was worth like \$300 ... I took a bus from Burundi in the morning ... We reached the border, even at the border they was not going to out stamp, they said that 'you, you are gay, how do you look like? Here in Tanzania we don't want this' and then I said 'please, I am not going to Tanzania I am going to Mozambique to visit friends. Help me, just entry visa I am not going to stay' ... I went to Dar es Salaam ... I have another friend of mine ... I would just ask ... everyone that I know to give me some money ... Then I say I need money from

⁶¹⁶ Xtra Staff. (2009, June 25). Pride Toronto's international grand marshal Victor J Mukasa. [Video Interview]. Video posted to http://youtu.be/YL8JtDCw_Cw

⁶¹⁷ Anzaldúa, G. (1987). *Borderlands La Frontera: The new Mestiza*. San Francisco: Aunt Lute Books, p. 79.

⁶¹⁸ Romesburg, D. (2012). Rae Bourbon's Life in Motion. In T. T. Cotten (Ed.), *Transgender Migrations: The Bodies, Borders and Politics of Transition*. New York: Routledge, p. 121.

⁶¹⁹ Downey, A. (2013). Exemplary Subjects: Camps and the Politics of Representation. In T. Frost (Ed.), *Giorgio Agamben – Legal, Political and Philosophical Perspectives*. Oxon, UK: Routledge, p. 119.

Tanzania to Malawi with the bus and visa ... I spent something like one week in Malawi. I was staying and collecting money ... and then I went to Mozambique ... I spent like two months, because I was resting and the money was finished, and I was waiting for a ticket to go to South Africa. I did not have a visa. So what I do? I was coming to negotiate with the people with the trucks ... So I negotiated with the one person, he said that *'okay, I can take you there and I will hide you ... in the big truck ... in the back ... with a lot of ... old metallic inside'* ... He put me inside ... with some place to breathe, but he never closed [the door of the trailer on her].⁶²⁰

Existence in the borderlands is tiring: a struggle for the simple necessities of survival coupled with an active exclusion sometimes by families, often by communities and – in part due to issues of legality – almost always by the State, shadowed by the promise of violence and death. Shifting uses of language and signifiers may seem counter-intuitive, even highly problematic, undermining what it might mean to be a 'true' anything, particularly in light of an 'anglo-centric' model of transgender. Yet, borderland existence, with its series of discomforts, necessitates flexibility and hybridity. Central here, though, is that problems and experiences of marginalisation were very rarely framed, if at all, as an issue of the self but rather discomfort created due to external factors. To be clear, 'the problem' or as Tricia refers to it, 'the situation' – the very reason for their experiences of exclusion – was not that they could not express their genders in fuller or more 'correct' ways but rather that societies, communities, schools and families often inhibited the most elementary level of what was felt as rightful gender expression on a day-to-day basis, and that in instances of reprisal there was no recourse to protection.

"Am I a crime to somebody?"⁶²¹

Arguably, in recent years one of the most authoritative narratives that has come to define the contours of what it means to be African, has been the marking out of the boundary against what it means to be 'unAfrican', utilising the figure of the homosexual. This has been intimately linked to the liberalisation of discourses and practices regarding gender identity and sexuality: sparked, in part, by South Africa's transition to constitutional democracy. Tensions here have most visibly played out in the terrain of human rights underpinned by a troubling enquiry as to who/what can be considered human. While some families may certainly protect their children, even tacitly support their gender expression, an often pervasive structural violence is ever-present, in relation to perceptions of homosexuality for gender non-conforming individuals. In all of the countries that participants left – with one exception (though legislation has been suggested to this end) – same-sex sexuality is considered illegal. The singular exception relies on public decency provisions to persecute those considered to be homosexual. The difference between the countries lies in the severity of the punishment, and whether or not the 'crime' of

⁶²⁰ 'Sasha'. Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at 'Gender Dynamix Collection – GAL108', Johannesburg, William Cullen Library, University of the Witwatersrand.

⁶²¹ Akraam

homosexuality is extended to include family members and acquaintances who did not report their suspicions.

Achille Mbembe begins his essay *Necropolitics* with a clear position that sovereignty, in the present day, is about having the power to be able to designate the living – those worthy of life and vitality – from the dead.⁶²² For Foucault, Biopower is constitutive of modernity, comprised of systems that manage, control and assist in facilitating a liveable life for those considered worthy of protection and investment.⁶²³ Biopower is about not only ensuring life but also maximising it. Nicholas Mirzoeff notes, in relation to Foucault, that death must be the corollary to this: life and death are two sides of the same coin. Mirzoeff posits that “death is the point where life escapes and exceeds Biopower, forcing it paradoxically to produce death to safeguard life ... any deployment of ‘life’ also exists in a relation to the ‘natural’”.⁶²⁴ Attaching life to the ‘natural’ carries considerable weight when read against the discourse that continues to link homosexuality to the ‘unnatural’. As Alex makes clear:

LGBTI community ... [in country of origin] ... They are just keeping themselves in hiding ... I know a transgender who wear like drag queen, she was actually perfect like a girl and then she went to a bar in [country of origin] ... she end up getting a man from the bar and then when they went the man found out and the man start beating her ... it's still like it's too much problem in Africa that need to be solved ... People live in ignorance, people live in confusion, people don't know anything, they don't want to listen and they don't want to understand that this is natural. That this exists. People cannot force to be who they are not.⁶²⁵

If Biopower is the power *to make live and let die*, then Necropower is the power *to make die and let live*. Mbembe troubles the possibility of Biopolitics being fully able to account for the ways in which contemporary forms of life are subjugated by the power of death, particularly in relation to refugee experience. He argues that Necropower takes into account technologies of power that facilitate the maximum possibility of life and vitality for some populations, while pursuing the maximum destruction of other populations. These others are funnelled into new and unique forms of social existence: what Mbembe refers to as worlds of “living dead”; ‘bare life’ where the only focus can be survival.⁶²⁶ As Cleo explains about her life in Uganda just before being forced to go into hiding in Kenya: “I have been attacked more than once ... what happens is that you are a dead person living. Waiting to

⁶²² Mbembe, A., & Meintjies, L. (2003). *Necropolitics*. *Public Culture*, 15(1 Winter).

⁶²³ Foucault, M. (1998). *History of Sexuality: 1*. London: Penguin Books.

⁶²⁴ Mirzoeff, N. (2009). The Sea and the Land: Biopower and Visuality from Slavery to Katrina. *Culture, Theory and Critique*, 50(2-3), p. 290.

⁶²⁵ Alex

⁶²⁶ Mbembe, A., & Holler, C. (2007, March 17). *Africa in Motion: An interview with the post-colonialism theoretician Achille Mbembe*. Retrieved April 29, 2015, from <http://www.metamute.org/editorial/articles/africa-motion-interview-post-colonialism-theoretician-achille-mbembe>

actually die”.⁶²⁷ It is a confluence of factors that animate the experience of shifting survival for transgender-identified individuals, which might eventually force them to flee. Victor makes clear the impact of this designation of life and death:

You have a government that has denied our existence ... you have faith leaders that have demonised you and telling people to hunt you down. You have the press that is calling for you to be hanged, that has created more hatred and more rejection and more discrimination ... you have these laws that are strict like the anti-homosexuality bill of 2009 that advocate for the death penalty for homosexuals ... All the things that we have suffered in the past ... have become worse, there are more arrests, even as I am here ... I am getting message from LGBT individuals saying ‘*Victor I am stuck. I am stuck. I have been chased away by people in the village, I have been chased away by my landlord, I have been evicted ... You have lesbians and trans men and even in some cases transgender women reporting corrective and punitive rape ... arbitrary arrests, exclusion from policies ... This is the day to day of being bashed by people in public space. Transgender people being denied access to places, because of gender, because ... of the gender binary ... you don’t know where you belong anymore.*’⁶²⁸

Mbembe, echoing Butler’s shifting space of ‘it’,⁶²⁹ asks what it might “mean to do violence to that which is nothing ... Who is a human being and who is not ... If one is not a human being, what is one?”⁶³⁰ The denial of humanity is embedded in this question and when the State begins to answer this injunction by referring to all those Others, those strangers, it captures under the label of homosexual, for instance, vermin⁶³¹ or a ‘festering finger’.⁶³² It is an interpellation that clearly sanctions violence, deprivation, abuse and eventually civil, social, and political death.

Tricia:

Where I was born ... [the village] ... people understand about who I am, but if I go to other towns ... they don’t understand me, they don’t know me, people they harass me, they shout at me ... ‘Stabane! Ngochani!’ ... ‘Ngochani!’ ... “Stabane what do you want here? We will kill you! Go overseas! Go to South Africa!”⁶³³

Tatenda:

They threw stones, wrapped a letter around the stones and put it into our fence ... saying they are going to burn down the house ... [in leaving] I was very scared but not as scared as I could have been

⁶²⁷ von Wallström, J. (Director). (2014, December 8). A Ugandan Transgender Girl Fights for her Right to Love. Chapter 1: The Woman - The Bill [Online Mini Documentary]. Video posted to <https://www.youtube.com/watch?v=BR9n4Q-OnLI>

⁶²⁸ Mukasa, V., & Albert, O. (2013). *LGBT Rights Abroad: The Spirit of 76*. Washington National Cathedral. Washington. Retrieved from <http://www.nationalcathedral.org/events/SF20130407.shtml>

⁶²⁹ Butler, J. (1993). *Bodies That Matter: On the Discursive Limits of Sex*. New York: Routledge, p. 7.

⁶³⁰ Mbembe, A. (2001). *On the Postcolony*. Los Angeles: University of California Press, p. 174.

⁶³¹ Reuters. (2014, February 18). *Gambia's Jammeh calls gays 'vermin', says to fight like mosquitoes*. Retrieved May 26, 2014, from <http://news.yahoo.com/gambia-39-jammeh-calls-gays-39-vermin-39-185834391.html>

⁶³² Chigwedere, A. (1996). Zimbabwe parliamentary debate, September 28, 1995, quoted in Franke, K. (2004). Sexual Tensions of Post-Empire. *Studies in Law, Politics and Society*, 33.

⁶³³ Tricia

in [my country of origin] because I knew it meant at least if I was going to die in a foreign country, I was going to die trying to be who I want to be. There are times when you just think you cannot get to the next day.⁶³⁴

Akraam:

My mother told me clearly that your father will hurt ... people are talking about us badly ... so you better go somewhere else and my mother suggested that I should go to her sister where she lives ... she gave me transport money and I went [there] as an asylum ... I stayed with my aunt in 2007 ... there were no jobs and my aunt said I was burden to her, my other aunt in Cape Town contacted my mother.⁶³⁵

Daniel:

I was tortured ... those guys were going to cut off both of my arms because of homophobia ... Yeah they threatened me ... I can't even try to stay for more than three month or four month whereby I have to leave the country to come here in South Africa so that I can get peaceful life.⁶³⁶

In almost all cases, the lines are redrawn with the tacit approval/encouragement of the State, borders proclaimed, and those not worthy of life and living are placed at the outer limits – as being not at home in the body of the nation: then, that the shift that necessitates leaving is enacted. It is the threat of death with no recourse to protection that eventually brings a transgender-identified person to the point of fleeing.

Imagaries: The Freedom of South Africa

So they tell me “now your life is finished in East Africa, so where are you going? You don't have a passport, you have nowhere to go!” So then I say, because I know South Africa, I've been reading the news it's a big country, they have civilisation ... South Africa everyone has rights, you know there's freedom; everyone and even my friend they told me go to South Africa no one will touch you. South Africa, there's a freedom there.⁶³⁷

In closing *Second Skins* Prosser notes that “Home is, on some level, always a place we make up, that belonging is ultimately mythic – for all of us perhaps unreachable without some sweet act of imagination”.⁶³⁸ If part of what is implied in the very root of trans is indeed to move across, beyond or through, then it is perhaps in participants' coming to South Africa that this meaning, for participants, finds its possibility. South Africa is, in some sense, “a sweet act of imagination”, representing the possibility of fully inhabiting one's corporeal sense of self, through being able to deploy the term transgender with the hope that it will be received with a modicum of understanding and acknowledgment. More than

⁶³⁴ Tatenda in Dolan, C., Chapman, A., & Neumann (Directors). (2011). *Getting Out* [Documentary]. Refugee Law Project.

⁶³⁵ Akraam

⁶³⁶ Daniel

⁶³⁷ 'Sasha'. Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at 'Gender Dynamix Collection – GAL108', Johannesburg, William Cullen Library, University of the Witwatersrand.

⁶³⁸ Prosser, J. (1998). *Second Skins: The Body Narratives of Transsexuality*. Columbia University Press, p. 205.

this, though, South Africa is synonymous with a single word, as Arthur – a trans man from East Africa – notes about his knowledge of the country prior to arriving: “*freedom, freedom, freedom*”.⁶³⁹

Gender refugees do not only move to claim something, as has been argued, they also impact and reflect something of the social and national spaces they inhabit. This is also true of the spaces which they come to, or hope to, inhabit. Gender refugees, coming to South Africa, invest this almost mythical space of ‘freedom’ with three key imaginings. Firstly: South Africa holds the possibility of a move out of the borderlands, into a society which, it is believed, will provide acceptance and recognition, while allowing personal expression. As Daniel who left East Africa with a bag full of dresses makes clear: “I came with them (the dresses) to have the liberty to do what I want – each and everything”.⁶⁴⁰ Secondly: South Africa is invested with a notion of belonging. The country is imagined as a space in which to settle – ostensibly ending the precarious nature and discomfort of a shifting existence. For Kelly, this shifting was the kernel of the narrative of persecution that she hoped to be able to present to a Refugee Reception Officer in South Africa. Tellingly, she invokes coming into South Africa as a moment that indicates the other side of shifting:

When you do have your interview you’re going to ... claim you are persecuted because ... they wanted to kill me three times ... and I shifted three times, because every month I had to shift, every month I had to shift ... Until I came this side [South Africa] ... so, I have to tell them my story⁶⁴¹

Lastly: South Africa represents a place of comfort where the lives of gender refugees might hold the possibility not only of being acknowledged, but also valued, in the very fact that they are protected by law. In essence, it represents a chance at a liveable life, underpinned by rights and freedom, a perceptible moving from the question signified by the words ‘*what are you?*’. Bobbie explains the intertwining of rights, protection and the ability to dress as she pleases.

It’s like in ... [country of origin] ... we don’t have these rights ... to expose ourselves like what we are ... they (friends) said ... you have to go to South Africa you are free to do what you want, you are free to wear what you want to.⁶⁴²

Bobbie describes this imagined space as one where she would have the right to ‘expose’ herself, enabling who she is. This suggests a belief in being able to actualise her gender fully, without the threat of marginalisation. For gender refugees, the expectation is that South Africa will acknowledge them as human beings, reinstating their humanity and that there will be others like them. Legal protection for participants suggests recognition and

⁶³⁹ Arthur

⁶⁴⁰ Daniel

⁶⁴¹ Kelly

⁶⁴² Bobbie

acceptance. Not as the pejorative homosexual, but as transgender and/or gay, with a particular bent on gender identity and expression. This, at least, is the perception – the belief that in moving from excessive visibility within one nation state to another that they will be constituted differently in the eyes of the law. South Africa represents the possibility of no longer being at odds with the law but rather a space in which a transgender-identified person might find themselves, or imagine themselves, to be included in the ‘we’ of the nation. For some, as in Eshe’s case, this may be with the possibility of accessing gender-affirming healthcare:

I was actually looking for freedom and ... to enhance my future ... the only thing that I knew was that the LGBTI community was legalised [in South Africa]. That’s the only thing I knew ... but I also had an idea of male to female transitioning.⁶⁴³

Importantly, there is a conviction that the country holds a community of others, a place to come where one is no longer a stranger and is visible in a way that acknowledges existence as part of the social imaginary. In essence, the country holds the promise of home, where social and political inclusion/life might be made possible within the nation space and within community. If the borderlands – for Anzaldúa – represent marginality, ambiguity and contradiction, then participants hope to come out of the borderland into South Africa, to be part of a legal, protected, and acknowledged populous: insiders, already interpolated as within the bounds or imaginary of the country’s perceived cultural representations. This freedom is linked to rights and, in turn, to perceptions of the State; all three are perceived to be available just on the other side of a physical borderline. South Africa as an imaginary is not a place to return from – “a holiday in the sun”⁶⁴⁴ – but rather a space that represents the hope of a final shift, the possibility of settlement, belonging and home – physically and metaphorically. A place intimately linked to the possibilities of what it might mean to be transgender.

Conclusion

In the introduction to *Bodies that Matter*, Judith Butler addresses this interpellation of sex and gender and fixity, in establishing how abjection – an “unliveable and uninhabitable zone of social life”⁶⁴⁵ – makes some bodies liveable while others are considered unliveable. For Butler – like Ahmed – these zones are populated by those that are made strange, that do not enjoy the full status of subject but “whose living under the sign of the “unliveable” is

⁶⁴³ ‘Eshe’. Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Gender Dynamix Collection – GAL108’, Johannesburg, William Cullen Library, University of the Witwatersrand.

⁶⁴⁴ Halberstam, J. (1998). *Female Masculinity*. Durham: Duke University Press Books, p. 164.

⁶⁴⁵ Butler, J. (1993). *Bodies That Matter: On the Discursive Limits of Sex*. New York: Routledge, p. 3.

required to circumscribe the domain of the subject”.⁶⁴⁶ Heterosexual hegemony defines and crafts the social and political; abjection here is really about what is necessary in order for one to be interpolated as a viable subject, at home within the nation state. In relation to this, Ahmed notes that discourses which figure a person as a danger either to home or community or nation, “allow the abdication of any social and political responsibility for the violence that takes place within legitimated spaces, and which is sanctioned through the Law, but also becomes a mechanism for the justification of acts of violence against those who are already recognised as strangers”.⁶⁴⁷

A combination of factors eventually force a transgender-identified person into the position of becoming a gender refugee. Broadly, it can be understood as a cascade effect: instances of exclusion – along with a lack of recourse to protection, and/or active sanctioning of violence on behalf of the State – combined with the threat of death, lead to the necessity of fleeing. Gender refugees either leave their countries of origin, or find that they cannot return to them, because of a fear of direct danger to their lives and sometimes the fear of reprisals against their families. This is often exasperated by a complete lack of State protection, or laws that actively persecute those believed to be homosexual. As Alex states regarding their ability to talk about sexuality or answer questions regarding homosexuality, let alone mention being transgender:

In my country you cannot tell other people. Even if they ask you: ‘Are you gay?’ You say: ‘No I am not’ because if you disclose yourself then expect that people will attack you because even that name – sexuality – is a very terrible name. They cannot even hear that.⁶⁴⁸

This chapter has suggested that the meaning of gendered and transgendered bodies is contextual and remains complicated by, and dependent on, the social and communal spaces and national homes they inhabit.⁶⁴⁹ For these participants, readings of gender non-conformity from an early age establish them as outsiders in several interlocking ways; in order to survive, they inhabit what I have described – drawing on Anzaldúa – as a borderland space. The trans imaginary here perceives freedom to be linked to the ability to express oneself in ways that are not at odds with society but rather allow for acceptance, protection and life. In relation to this, this chapter has suggested that gender refugees might make the choice to shift towards South Africa when death comes too close, in the hopes that they might find protection, acceptance and a sense of belonging. Being a gender refugee is intimately linked to the possibility of being transgender in South Africa.

⁶⁴⁶ Ibid., p. 3.

⁶⁴⁷ Ahmed, S. (2000). *Strange Encounters: Embodied Others in Post-Coloniality*. New York: Routledge, p. 37.

⁶⁴⁸ Alex

⁶⁴⁹ Boyd, N. A. (2006). Bodies in Motion: Lesbian and Transsexual Histories. In S. Stryker and S. Whittle (Eds.), *The Transgender Studies Reader*. New York: Routledge, p. 430.

Chapter Four: Of Categories and Queues

The Republic of South Africa shares borders with six countries: Lesotho, Swaziland, Mozambique, Zimbabwe, Botswana and Namibia. There are 72 designated ports of entry into the country – 10 airports, 9 Harbours and 53 land ports – along almost 7000 kilometres of what has commonly been labelled ‘porous’ border.⁶⁵⁰ Borders, both bodily and material, discern a body’s ability to identify as a citizen, a member of an imagined community or a stranger. They represent both promise and freedom, and confinement and restriction. To cross borders legally requires documentation, which must indicate sex/gender,⁶⁵¹ purported to be easily identifiable and readable by the representative eye/mind of the state⁶⁵² in given moments of crossing. How refugees manage borders and border crossing is of central importance here. Internationally, States rely on immigration control to reconstitute their borders. This control depends on categories of exclusion and inclusion which are mitigated through documentation. These categories “do productive ideological and bureaucratic work, organising individual and institutional responses in ways that structure social outcomes”.⁶⁵³ Yet, if individuals, in entering the country, do not – or simply – cannot appeal to delineated categories, such as ‘Male’ or ‘Female’ for instance, and instead utilise a number of other means, legal or otherwise, to circumvent border control, it forces into question the purpose and tangibility of these categories and indeed that of transgender identity/ies.

Globally, as it stands, documents are crucial in not only naming but also “sexing the subject ...[while] the social relations of sex and gender are institutionally organised and reproduced through the use of documents”.⁶⁵⁴ For transgender and gender-variant people the world over, documents are a particular site of contestation since they represent the epoch of a dichotomous system that – time and again – actively endangers or excludes those who carry them. Yet, not to carry a document in a world system that requires them (where gender/sex are still read as stable and discernible forms of identity) can be just as

⁶⁵⁰ Portfolio Committee on Home Affairs. (2012). *Home Affairs: State of Ports of Entry and Refugee Reception Offices*, Department of Home Affairs. Cape Town: Parliamentary Monitoring Group.

⁶⁵¹ Throughout this chapter I use sex/gender to indicate the overlap between the two within the law and the eyes of the State generally.

⁶⁵² Here, the gaze of the State might be facilitated by border control officers or Home Affairs officials. This is not to say that the State here is considered a monolithic entity, singularly and harmoniously focused but rather that “state actors produce, reconfigure and police particular gender arrangements” in relation to what Paisley Currah, drawing on Nikolas Rose, has called the “securitisation of identity”. Source: Rose, N. (1999). *Powers of Freedom*. In Currah, P., & Mulqueen, T. (2011). *Securitizing Gender: Identity, Biometrics, and Transgender Bodies at the Airport*. *Social Research*, 78(2). (Original work published 1999, Cambridge University Press).

⁶⁵³ Meadow, T. (2010). “A Rose is A Rose”: On Producing Legal Gender Classification. *Gender and Society*, 24(6), p. 818.

⁶⁵⁴ Namaste, V. K. (2000). *Invisible Lives: The Erasure of Transsexual and Transgendered People*. University of Chicago Press, p. 260.

precarious. South Africa is no exception. Although the country may offer protection to gender refugees, the make-up of the wider points of access, including the very legal system itself – particularly in relation to documentation – is “based on notions of immutable, binary gender categories”.⁶⁵⁵ These categories for the most part are inadequate cater for the very existence of transgender people – asylum seekers and South Africans alike⁶⁵⁶ – or consider them entirely illegible, creating an “array of intermingled and overwhelming legal dilemmas”.⁶⁵⁷ Dean Spade argues in *Normal Life* that trying to simply ‘fit’ transgender-identified people into existing legal systems reinvests those systems with new means to hide where they are critically flawed.⁶⁵⁸

Once entering South Africa, an asylum seeker has fourteen days within which to get to a Refugee Reception Office (RRO), run by the aptly named Department of Home Affairs,⁶⁵⁹ and apply for asylum.⁶⁶⁰ Home Affairs, formerly the Ministry of the Interior, has been the South African government’s unmistakable key-holder for population control. The Department defines, assigns, records and registers births, deaths, marriages and the legal comings and goings of a variety of differently-designated bodies. It also legislates which bodies are acknowledged as citizens and, by extension, members of the national body; who may call South Africa home and how they may go about doing so – elucidating the very notion of home. Home Affairs is the representative organ of the South African State, dealing with all matters designated to fall within the ambit of the home of the nation, defining and delineating categories of exception and exclusion. This chapter seeks to understand – in relation to gender refugees and transgender as a category of asylum – what it takes to enter this house. Who manages that entrance, and how? Moreover, what does it mean to have, and be able to produce, documents – or not – and what is lost in the moment a document no longer accurately reflects an individual, either through name or through a sex/gender

⁶⁵⁵ Luibheid, E. (2002). *Entry Denied: Controlling Sexuality at the Border*. Minneapolis: University of Minnesota Press, p. 153.

⁶⁵⁶ The difficulties experienced by South Africa transgender people has been well documented in the media in recent years. See: Hess, L. (2015, August 19). *South Africa: Home Affairs Trauma for Pretoria Transgender*. Retrieved August 25, 2015, from <http://allafrica.com/stories/201508191542.html>; DeBarros, L. (2014, October 9). *Home Affairs Drives Trans Woman to Hunger Strike*. Retrieved October 9, 2014, from <http://www.mambaonline.com/2014/10/09/home-affairs-drives-trans-woman-hunger-strike/>

⁶⁵⁷ Rosenblum, D. (2000). “Trapped” in Sing Sing: Transgendered Prisoners Caught in the Gender Binarism. *Pace Law Faculty Publications*, (Paper 207), p. 502.

⁶⁵⁸ Spade, D. (2011). *Normal Life: Administrative Violence, Critical Trans Politics and the Limits of the Law*. Brooklyn, NY: South End Press.

⁶⁵⁹ Department of Home Affairs of the Republic of South Africa. (2014). *Refugee Status & Asylum*. Retrieved July 15, 2014, from <http://www.home-affairs.gov.za/index.php/refugee-status-asylum>

⁶⁶⁰ See Appendix 2 for an explanation of the South African asylum system, along with rights and duties afforded to refugees and asylum seekers.

marker? Lastly what can this tell us about what transgender does, in relation to subjects who imagine it as existing within this space – South Africa?

Passports and Borders

Once the decision has been made that in order to survive it is necessary to leave one's country of origin, the question becomes where to go and through what means available. While the answer may have been South Africa for all participants, it was the means that varied from person to person. Participants can be divided into two distinct groups – those with documents and those without. Even for those with documents, travel always involved some level of subterfuge. The majority were able to use their passports initially to cross the border, either coming from countries that had pre-established visa agreements with South Africa or applying for a visitor's/student visa or a work permit. The level of cunning required varied: some initially had to lie to their families about where they were going; others lied to border guards about what they were going to do in South Africa. Unlike those with documents, the route for undocumented individuals was hardly ever direct.

Only one participant started out in completely the opposite direction of South Africa. Coming from a country with very little media access, and being forced to marry her cousin at the age of seventeen, Akraam was faced with two options: tell her father her feelings about being a woman and face the very real possibility of being killed for embarrassing the family, or run away. She stole \$100 and headed for a safe house on the coast, waiting to be placed with 70 other migrants – who were also undocumented – on a small fishing boat headed for Yemen. As a child she had been teased with the term 'ladyboy'; after gaining asylum in Yemen, other migrants began to taunt her with self-same ascription. Again she left, this time for Saudi Arabia, in a car with ten other people. As her group attempted to cross the border the Saudi police chased them and opened fire. When the body of one of her compatriots fell beside her she stopped running. Placed in a lice-infested Saudi jail, aware of the heightened danger, she did her best to remain inconspicuous whilst awaiting deportation back to her country of origin. She was petrified of what awaited her on her return, in particular the wrath of her father. Her mother organised safe passage for her to an aunt in Kenya and from there she was sent, again financed by her mother, with smugglers to Johannesburg, South Africa, where she was placed on a bus to another aunt in Cape Town:

Some guys who work the illegal way in the border they will take your money ... it's like \$600 ... So he took ... us, I wasn't alone, from Nairobi to Tanzania. He knows the soldiers ... [We] stayed in Dar-es-Salam ... for three or four days and then we moved to Mozambique. A place called Musina not this South African Musina ... we came by boat. That boat was like three hours it wasn't worse like the one in Yemen. There was bus ... from Musina to Nampula ... We stayed there for seven days and then we left from Nampula to Maputo ... At night there were these taxis, you know these local taxis? ... They took us from Maputo to the border. We jump out of the car ... the fence we open it up ... it was a disaster. You can't even carry your body it's so difficult ... You have to throw away all your luggage ...

Once you jump and you are in, another taxi that works local, they put you in. They drive you to somewhere in Limpopo and they just leave you there. The good thing is once you in they won't deport you back ... you have to go to Home Affairs in fourteen days to get asylum.⁶⁶¹

The rest of the undocumented participants crossed on foot, relying on the '*Malaishas*' – slang for the gangs who practice a kind of human smuggling at the border.⁶⁶² As Maxine explains,

I came with '*Malaishas*' ... Those who you pay to cross in Limpopo ... We started to walk like 9:30 (PM) until 7 (AM) ... there was no choice because ... when you don't have passport you have to cross like that ... "*Amagumaguma*" ... are those gangs on the border ... They are going to catch you and search you and take everything ... Sometimes they're gonna rape.⁶⁶³

The Malaishas function on both sides of the border, waiting in taxis to take those who have come through the border fences to Johannesburg. Both Bobbie and Siya used these services as well, and explain both the physical and environmental perils – drowning, being robbed, raped, beaten, extorted by border police or eaten by a crocodile – of having to cross without documents.

We crossed this Limpopo by foot ... You give these people money ... I didn't even have money, so my friend the one she was here [in South Africa] ... she is the one who paid for me ... So when I came here I just phoned: "*I want to come there I'm by the border now*". So she just paid the money to these guys ... I was scared but it's like I wasn't alone, we were 10 ... women and men, but sometimes they rape you ... And you don't have papers.⁶⁶⁴

Siya left Southern Africa after reading about the possibility of gender-affirming healthcare in South Africa. She desperately wanted the freedom to wear dresses and skirts, but feared her father's open resentment and hostility. Along with this she felt the pressure of reports by local news media that the President of her country believed people like her had no place in a society which she had already experienced as extremely suspicious of her – "like being under mirrors".

I used border jumping. I had to cross in the water, and the water was here [at waist level], but I knew if I cross, that if I'm this side [in South Africa] ... I'm safe cause I have got my asylum.⁶⁶⁵

John Torpey notes that because nation states are both "territorial and membership organisations they must erect and sustain boundaries between national and non-nationals

⁶⁶¹ Akraam

⁶⁶² The spelling of this particular term is open to question. Other possible spellings include '*malayisha*' or '*malashiyas*'. The spelling used here seems to be the most prevalent. See: Dzimwasha, T. (2014, January 13). Zimbabweans migrating to South Africa at risk of abuse and exploitation. *The Guardian*. Retrieved May 26, 2016, from <http://www.theguardian.com/global-development/2014/jan/13/zimbabwe-migration-south-africa-exploitation>

⁶⁶³ Maxine

⁶⁶⁴ Bobbie

⁶⁶⁵ Siya

both at the physical borders and among the people within these borders”.⁶⁶⁶ The passport functions as the first document in a regime of bureaucratic control between States dedicated to establishing territory and membership.⁶⁶⁷ Combining a photograph with other identifying data, such as sex/gender, passports are meant to identify their carrier uniquely and unambiguously. As noted, for transgender-identified individuals among others, to have a document that explicitly states sex/gender often – paradoxically – places them in danger. In some cases, even asking for this type of documentation can be problematic: a 2003 Human Rights Watch interview with a Zimbabwean trans woman illustrates: “In the law they know I am still a man, and this is Zimbabwe. If you go and ask about these things, they will make your life very difficult”.⁶⁶⁸ As noted in chapter two, however, in the majority of cases gender refugees leave countries of origin in the wake of an often traumatic or near-death experience. The need to leave in order to survive often supersedes the practicability of waiting and applying for adequate documentation for those who do not have necessary travel documents.

The sex/gender reflected on that document versus the perception of bureaucracy takes on critical importance in situations requiring the traversing of borders. Before coming to South Africa, Eshe, when confronted by immigration officials and police officers, was constantly questioned over her documents:

With the whole process of travelling ... the difficulties that I had with the immigration officers like, you know “*You picture doesn’t go well with your information on your passport*” And I would like, ask them “*What do you mean? Because me if I look at myself and my picture I could see me as myself*” But I couldn’t just understand but they were differentiating my picture and the information that was on my passport ... the immigration officer didn’t believe me and I had no way out but to strip naked so that he could believe that genetically I am male, so that’s when he actually believed me because he sort of like, put a twist on me like “*oh, ok, so if you don’t prove that I’m either arresting you or getting you deported*”.⁶⁶⁹

The problem evidently becomes one of how to prove that one is the true owner of a document that in the mind/eye of officialdom does not compute because the gender/sex marker does not match. As in Eshe’s case, this meant complying with the invasive and somewhat humiliating ultimatum of exposing her body for inspection or facing deportation. Victor was also stripped naked to prove that he was female-bodied in order to gain access to

⁶⁶⁶ Torpey, J. (2000). *The Invention of the Passport: Surveillance, Citizenship and the State*. Cambridge University Press, p. 1.

⁶⁶⁷ Ibid.

⁶⁶⁸ Human Rights Watch International and International Gay and Lesbian Human Rights Commission. (2003). *More than A Name: State-Sponsored Homophobia and Its Consequences in Southern Africa*. Human Rights Watch, p. 80.

⁶⁶⁹ ‘Eshe’. Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Gender Dynamix Collection – GAL108’, Johannesburg, William Cullen Library, University of the Witwatersrand

a Ugandan passport.⁶⁷⁰ The suggestion here, quite clearly, is that when there is perceived incongruence between the sex/gender marker, (a standardised feature of all passports), and the document holder, the legitimacy of ownership is perceived to lie at the level of the sexed body. When Stella left her country of origin the official at the airport noted, “*you look like a woman but in the passport the gender is a man*”. After some persuasion she was allowed to travel but her trip aroused suspicion. In her absence an investigation was opened, and she believed that in all likelihood, if she returned she would be arrested, with no assurance of ever being released. Stella felt that this would be too costly not only to herself but also to her family, so she decided – for her own safety and theirs – to claim asylum in South Africa.

Given these experiences, it should be unsurprising that some people choose to enter South Africa undocumented, in order to avoid approaching their own States for passports or travel documents or having their life made ‘difficult’. Yet, simply because asylum seekers have crossed into South Africa does not mean they are suddenly free of sex/gender management and surveillance. As Torpey notes, boundaries are also maintained through documents between people *within borders* – one such document is the asylum seeker permit.⁶⁷¹

Putting the ‘Home’ in Affairs

For first-time arrivals or ‘newcomers’ who want to apply for an asylum seeker permit in South Africa, the first step is not so much *entering* an RRO, but rather *finding* one. Over the past several years, it has become increasingly difficult both to find and to access RROs as they themselves seem constantly to be moving, closing or restructuring. The placement of RROs is central to understanding some of the initial difficulties with the asylum regime in South Africa more broadly. The Cape Town RRO has been evicted by landlords and/or local businesses three times from three different locations including Maitland and Nyanga.⁶⁷² In 2003/2004, the Johannesburg RRO moved three times in a period of six months. According to Human Rights Watch, during this time there were no notices providing information as to where the offices had relocated. This created “confusion and, potentially, the risk of arrest, detention, and deportation for those who were due to renew their permits but found the

⁶⁷⁰ Mukasa, V., & Albert, O. (2013). *LGBT Rights Abroad: The Spirit of 76*. Washington National Cathedral. Washington. Retrieved from <http://www.nationalcathedral.org/events/SF20130407.shtml>

⁶⁷¹ Torpey, J. (2000). *The Invention of the Passport: Surveillance, Citizenship and the State*. Cambridge University Press, p. 1.

⁶⁷² Lovemore, A. T., & , Minister of Home Affairs. *Internal Question Paper no 21 of 2011*. (Department of Home Affairs of the Republic of South Africa), QUESTION 1989 / NW2234E (2011). Cape Town: Parliamentary Monitoring Group.

former offices shut”.⁶⁷³ Jay Prosser asks, quite productively: “What are the politics of home?”.⁶⁷⁴ Aren Aizura notes that – for Prosser and as has been argued thus far – “‘home’ is doubly inflected as the task of finding a home in the body, and being able to call the State home”.⁶⁷⁵ The *home* intended by the DHA for asylum seekers is seemingly a constantly perplexing, vexed and elusive edifice. For those who cross into South Africa the clear hope is to come into a legible, legal visibility: to be transgender while also having rights and protections accrued to them as human beings, and to be no longer relegated to the borderlands of society. Yet, perhaps homes are not so much about “inclusions and wide open arms as they are about places carved out of closed doors, closed borders and screening apparatuses”.⁶⁷⁶

Participants applied for asylum in either Johannesburg or Cape Town. Not a single participant was able to enter an RRO on the first day that they queued outside. It is well-documented that asylum seekers in South Africa struggle to gain access to RROs. Queuing on a daily basis, the length of time over which they queue often exceeds that of their fourteen-day visa. As Daniel explains, one can wait in the queue all day and night, only to be told: ‘no, we are not working on newcomers today’.⁶⁷⁷ The goal, however, is to attain ‘paper’; their only option then is to return the next day. Daniel describes this as the first of many repetitive and exhausting experiences: “you go, you come back, you go and you come back”. At the centre of this system is a constant waiting, something that seemingly wears applicants down: for access, decisions, acknowledgment, papers, renewals, and officials to finish their lunches and phone calls. It is a battle wherein the rules of engagement are constantly changing. As Tatenda explains, the waiting can seem so endless, so devoid of hope, that asylum seekers do consider turning back:

[waiting outside Home Affairs] just makes me want to go back and if I have to die then just die because it just seems like you just wasting your time. Every time you come here nothing happens.⁶⁷⁸

⁶⁷³ Human Rights Watch. (2005). *Living on the Margins: Inadequate protection for refugees and asylum seekers in Johannesburg* (Vol. 17) 15A. Human Rights Watch, p. 13.

⁶⁷⁴ Prosser, J. (1998). *Second Skins: The Body Narratives of Transsexuality*. New York: Columbia University Press, p. 204.

⁶⁷⁵ Aizura, A. Z. 2006. Of borders and homes: the imaginary community of (trans) sexual. *Inter-Asia Cultural Studies* 7(2), p. 295.

⁶⁷⁶ George, R. M. (1999). *The Politics of Home: Postcolonial Relocations and Twentieth-century Fiction*. London: University of California Press, p. 18.

⁶⁷⁷ Daniel

⁶⁷⁸ Tatenda in Dolan, C., Chapman, A., & Neumann, D. (Directors). (2011). *Getting Out* [Documentary]. Refugee Law Project.

Kelly and Ava both began their asylum application process at Maitland, an RRO based in Cape Town that has been described as something akin to a “cattle station”.⁶⁷⁹ Kelly explains why it took them almost a month to gain access to the building:

I went there for almost a month without getting a paper. By the second month I got a paper ... they are telling us that ... refugees from Uganda, Tanzania, Rwanda, Burundi we go on Wednesday. I was going every Thursday. Thursday because we [East Africans] ... used to go on Thursday. Every Thursday in the week is East Africa. Maitland was too horrible. We were too many people.⁶⁸⁰

Certain countries and regions are seen to on certain days. These days can change, often with little information or notice, which means, as in Kelly’s case, an applicant can end up queuing with the wrong group for quite some time without ever being informed of the change. The assumption seems to be that other members of the queue would provide clarity or information, but for gender asylum seekers the aim is to remain as inconspicuous as possible, often not talking to another soul. Kelly even goes to Home Affairs in what they consider to be a disguise – baggy stereotypical male attire, no make-up or handbag:

I dress differently because I don’t want to be called those names, I don’t want trouble with people ... I put on big jeans, big t-shirt ... no one bothers me ... I stand in the men’s queue. There is nothing you can do my dear, I have to balance it.⁶⁸¹

Kelly notes that disguise is not uncommon, “those transgender things like dresses are for at night” and that this is the approach of most transgender people in order to avoid detection. This may seem counter-intuitive in a system like asylum, that hinges on self-exposure for access – “a sphere of immigration law that focuses on taking in the vulnerable, not only can asylum law cope with dissident expressions – be they political, sexual or gender related – it requires them”.⁶⁸² Over the years, the number of people queuing outside the ever-migratory RROs has steadily increased, but the capacity to assist those queuing has not been able to keep pace.⁶⁸³ Many have been forced to wait outside the offices for days; some sleep overnight, and others like Tatenda arrive in the early hours of the morning.

Between 3am and 8am you have to bribe the muscle men to get you in the first position [in the queue]... in the second or third just to be close to the gate so that you can be one of the first people attended to. Fighting? There is a lot of violence people were throwing bottles at each other you know? And it was really hectic and then when you get to 8 o’clock they open the offices they take like

⁶⁷⁹ Portfolio Committee on Home Affairs (2011). *State of Refugee Reception Offices: briefing by Deputy Minister, Home Affairs*. Cape Town: Parliamentary Monitoring Group.

⁶⁸⁰ Kelly

⁶⁸¹ Kelly

⁶⁸² Solomon, A. (2005). Trans/Migrant: Christian Madrazo's All-American Story. In E. Luibheid & L. C. Jr (Eds.), *Queer Migrations: Sexuality, US Citizenship and Border Crossings*. Minneapolis: University of Minnesota Press, p. 20.

⁶⁸³ Cornelius, J., & Jordan, B. (2014, December 8). Asylum seekers get cold shoulder. *Times Live*. Retrieved December 10, 2014, from <http://www.timeslive.co.za/thetimes/2014/12/08/asylum-seekers-get-cold-shoulder>

ten people in front of you and they tell you you have to come back tomorrow. This is after waiting for more than 7 hours in the rain.⁶⁸⁴

The documentation they receive is critical to their survival. Not only does it establish that they have made their presence in the country known through the correct legal channels, but it allows access to rights conferred on asylum seekers such as health care, education and social services. In November 2007, a Zimbabwean asylum seeker died of starvation in the queue outside the Cape Town RRO.⁶⁸⁵ In same year, asylum seekers sleeping outside the offices in the hope of gaining access the next day claimed that security guards had burned their personal belongings, including clothing and blankets.⁶⁸⁶ However, even though the general condition of the queues have been described as “completely inhumane”,⁶⁸⁷ fear of arrest has meant that asylum seekers, including gender refugees, would rather remain in the queue and near the RRO, for an indefinite period of time, no matter the conditions, than risk being caught without documentation.⁶⁸⁸ These experiences are not unique to gender refugees and asylum seekers but are concerns for everyone who attempts to access an RRO in South Africa. What sets the experience of gender refugees apart from those of other asylum seekers is the very structure of this system outside an RRO.

The Queue

Official records, or as participants refer to it – the attaining of ‘papers’ – and the taking of biometric data (fingerprints) are arguably centrally implicated in the structure of discipline meted out by Home Affairs. Drawing on the work of Foucault, Eithne Luibheid argues that for LGBT asylum seekers, immigration practices down to their most “mundane procedural details, produce and naturalise ... identities”.⁶⁸⁹ In the same vein as Spade, she proposes that it is the regimes of knowledge embedded in the neutral and mundane which

⁶⁸⁴ Tatenda in Ntluli, B. (Executive Producer). (2011, October 20). *The Stories of Several LGBTI Africans Persecuted for Being born LGBTI*. Special Assignment. South African Broadcasting Corporation [Television programme]. Retrieved from <http://oiinternational.com/1982/south-african-broadcasting-corporation-special-assignment-20-october-2011/>

⁶⁸⁵ United States Committee for Refugees and Immigrants. (2008). *US Committee for Refugees World Survey 2008*.

⁶⁸⁶ Ibid.

⁶⁸⁷ South African National Aids Council. (2008). *Vulnerable groups: Refugees, asylum seekers, and undocumented persons: 'The health situation of vulnerable groups in SA'*. Portfolio Committee on Home Affairs. Cape Town.

⁶⁸⁸ Theron, L. (2011). *When a Progressive Constitution Is Not Enough, and Other Challenges*. Presented at the International Association for the Study of Forced Migration, Kampala, Uganda.

⁶⁸⁹ Luibheid, E. (2002). *Entry Denied: Controlling Sexuality at the Border*. Minneapolis: University of Minnesota Press, p. xxii.

actually discipline asylum seekers, but go uncontested and often unnoticed.⁶⁹⁰ Arguably, there are two interconnected sites of discipline that the DHA maintains in relation to asylum, the one universal – paperwork – and the other possibly a peculiarity of the South African asylum system, an initial site at the very entrance to any RRO: the queue.

Divided in two, a side for men and a side for women, the queue forces a gender asylum seeker to make a choice, much like the issues surrounding transgender access to public bathrooms.⁶⁹¹ The queue makes clear that there are two distinct categories of people that Home Affairs expects to enter their buildings and that these categories are based on unchanging, visibly readable, anatomical difference. Moreover, that these “anatomical distinctions are a legitimate way of organising and sorting people” and, by extension, are the legitimate categories according to which to be sorted as a human being.⁶⁹² For gender refugees, the queue presents a choice, the route of least danger and whether or not they will be considered a fraudster, attempting to access the system ahead of others. For Alex who arrived with documents from Central Africa, making the right choice on their first day approaching an RRO, in relation to their transgender identity, was a struggle:

There was a lot of people and there was confusion. People you know there was two queues and you have choose. Am I gonna be to the girl's queue or the men's queue? I was like in the middle. I was just in the middle ... There were people fighting there. Everyone wanted to go inside to get the permit.⁶⁹³

Or as an anonymous transgender asylum seeker explains in the documentary *There's No Place for Me*:

There is a woman queue and a man queue and then if you identify as a transgender but you never complete your transition from male to female or female to male, you look like in-between, your gender go beyond male and female.⁶⁹⁴

Akraam explains the trauma of gendered surveillance and being read in the queue:

I don't care whoever says whatever as long as they don't come hurt me ... I can hear people talking, “why is he like this?” and in loud voice too to make me feel bad. “This man is supposed to be a man. He is a disgrace.” Discussing about me when I'm in the queue. I ignore it ... even though I'm hurting inside, I just show just pretend that I'm confident.⁶⁹⁵

⁶⁹⁰ Spade, D. (2011). *Normal Life: Administrative Violence, Critical Trans Politics and the Limits of the Law*. Brooklyn, NY: South End Press.

⁶⁹¹ Kogan, T. S. (2009). Transsexuals in Public Restrooms: Law, Cultural Geography and *Etsitty v Utah Transit Authority*. *Temple Political and Civil Rights Law Review*, 18(2), 687.

⁶⁹² Cohen, D. S. (2012). Sex Segregation, Masculinities and Gender-Variant Individuals. In A. C. McGinley & F. R. Cooper (Eds.), *Masculinities and the Law: a Multidimensional approach*. New York University Press, p. 168.

⁶⁹³ Alex

⁶⁹⁴ Organization for Refuge, Asylum and Migration (ORAM). (2013). *There's No Place for Me: Protecting Sexual and Gender Minority Refugees* [Online Mini Documentary]. Video posted to <http://www.oraminternational.org/en/videos/273-theres-no-place-for-me>

⁶⁹⁵ Akraam

The second issue related to this, as mentioned by Kelly, is that specific countries or regions queue on specific days. For participants then, some of whom are either living in stealth within communities, or not known by country-of-origin communities to be in South Africa, there is very real concern in relation to being seen. One means through which to deal with this is to dress, as Kelly did, in a type of disguise. Ava, in the beginning, also tried to disguise herself:

It's a problem when you stand in the queue, people look at me and I was like, 'Oh my God, I don't know what to do!' ... I try when I go to 'boy it up'. I'm going to be a boy and everything but the figure it shows you, so I remove my earrings and everything but people still notice it you know?⁶⁹⁶

Others in the queue remain curious, particularly since it is highly likely that every one -to-three months, depending on the renewal period, the same people will find themselves in the same place, attempting the same task. Ava speaks about another transgender person, a friend who "also looks like a female" who has also been forced to endure the queue, but unlike Ava – who had only just started hormones – "passes". This person has been living as a woman for far longer than Ava:

I knew her when I came to Cape Town ... She's been a trans ... dressing and living as a woman for quite a while. She passed but I don't know how she does at Home Affairs. Even when she came to Cape Town she was a female. She started in Johannesburg ... I don't know what she does with Home Affairs ... Unfortunately ... Whatever I dress, even if I dress like a male I will still look like a female. What would I do at Home Affairs? So that is what is still brewing in my head and if I should try to go to women queue and maybe see if the security kick me out of the queue.⁶⁹⁷

This friend is Stella and she, very cleverly, moved queues when the RRO moved sites, utilising the apparent confusion of a new system to re-establish herself across the line. Although she was able to switch queues, she was not able to escape the community from her country of origin.

I don't have the problem now if the security doesn't say anything to me ... I'm female. Just the people, the people from the country sometime like to gossip, saying "*She a woman? She a man? She a woman?*" ... I can just see it's gossip only ... For me it doesn't matter as long as he [the security] ... don't stop me going inside⁶⁹⁸

Alex describes the experience of the queue in relation to the tension regarding hiding from and visibility to fellow country people, asylum seekers from the same region and perceptions of gender/sex, as not only a systemic violence but a "double oppression" faced by asylum seekers because they are transgender.

⁶⁹⁶ Ava

⁶⁹⁷ Ava

⁶⁹⁸ Stella

Newcomers: Having 'Friends'

Once an asylum seeker has navigated the queue and gained access to the RRO, they then have to begin the actual process of applying. Luibheid argues that the case file created by the RRO official is not just evidence of each individual applicant's history; it also functions as evidence of how individuals have been produced within acceptable categories – gendered and sexualised in ways the state can comprehend.⁶⁹⁹ When asylum seekers know someone perceived to have power, in whatever form – monetary, racial, physical, institutional – even the smallest amount, this can make all the difference in relation to both navigating and comprehending the system. Ava describes the experience of getting through the doors:

We were thousands ... They gave me paper to fill up my story – why am I here as a refugee? How did you come to South Africa? Which way did you use? ... They keep everything ... They did not give me asylum paper the same day. I came back the second day they gave me paper.⁷⁰⁰

Sasha was one of the first openly transgender people to apply for asylum as the sex/gender she identified, and seek assistance in order to do so. In her childhood, Sasha's parents were relatively accepting: from a young age she was allowed to dress as she pleased.⁷⁰¹ This did not mean her parents were comfortable with their child – whom they had assumed would be a boy – wearing dresses and saying that she was in fact a girl, but they did not curtail her. It was once she stepped outside the confines of her parental home that the harassment began. She dropped out of school because her teachers kept chasing her from class; once outside the classroom the police harassed her – eventually the situation became untenable. She spent several years shifting between homes, friends, and countries; changing her hair once a month in an effort to evade authorities. She was eventually arrested in Uganda and placed in a military prison, where soldiers who assumed that her gender presentation was a disguise and that she was in fact a spy beat her. After her release, she was later arrested in Zanzibar at a club and charged with "dressing as a woman". As punishment she received three beatings and was forced to shave her head. After almost a decade of evasion, she was finally arrested in Kenya and deported back to her country of origin. It was this last deportation, under threat of further arrest, that finally – with the assistance of friends – brought her to Cape Town to seek asylum.

At first she attempted to navigate the asylum system on her own. Like all asylum seekers she began the process by waiting outside an RRO. After failing to gain access to the RRO, an

⁶⁹⁹ Luibheid, E. (2002). *Entry Denied: Controlling Sexuality at the Border*. Minneapolis: University of Minnesota Press.

⁷⁰⁰ Ava

⁷⁰¹ 'Sasha'. Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at 'Gender Dynamix Collection – GAL108', Johannesburg, William Cullen Library, University of the Witwatersrand.

acquaintance told her that the system would only work in her favour if she brought a friend who had a job, and that she was “stupid” not to. Having made contact with Gender Dynamix (GDX) she turned to them for assistance. Sasha was one of the first asylum seekers to ever approach the organisation. Liesl Theron, director at the time, returned to the RRO with her. Theron gives some insight into the nature of the queue for gender refugees, in relation to the perception of rights related to being transgender in South Africa:

As much as you are in South Africa and in the borders you have the same so-called constitutional rights, you are amongst people from other African countries who are prejudiced, I mean the fact that they are also now standing in a queue to get into South Africa legally doesn't change their mind-sets. So she was ever being pushed at the back of the queue. She was in a certain way, standing out people, kind of like, read her body differently.⁷⁰²

There is no doubt that the presence of a white, cisgendered woman, an anomaly in the asylum queue, not only created a stir but ensured access. As Theron openly acknowledges:

That is the other sad reality of it. I then joined with her and with my white skin and we just progressed. We just kind of bypassed, we kind of like over-took the other people we were in front.⁷⁰³

Once inside, Theron was able to explain the work that GDX did, even communicating in Afrikaans with an official, and the reason Sasha was seeking asylum. She stressed that it was necessary for Sasha to have papers identifying her as a woman in South Africa for her own safety. Even though South Africa at this point offered Constitutional protection and had implemented the Refugee Act, the onus was GDX to educate Home Affairs. Theron recalls asking the woman at Home Affairs:

‘Do they receive many cases of people who apply for refugee status because they are gay or lesbian?’ Because obviously in Africa they don't speak about transgender, transvestite they just speak about gay and lesbian ... She answered that slowly it becomes more and more prevalent. So I even gave her the advice that they must also themselves go to the website of Behind the Mask ... and read there.⁷⁰⁴

Akraam, on arriving in Cape Town, also had help, she was taken by her aunt to Home Affairs and escorted into and out of the RRO, with assistance from a translator who was part of her wider local community in South Africa. In order to remain safe from her local community she never revealed anything about either her sex/gender:

From my first day ... I didn't tell Home Affairs that I was runaway for [being transgender] ... because there was always a ... an interpreter therefore I can't speak about that ... the interpreter will want to interpret for me or ... tell the others that surround me and then I can be in trouble ... The interpreter spoke to the official at home affairs. So when they ask me the reason that I am here I just told them in general that it was war ... I went for interview ... they give me the status ... It was corruption ...

⁷⁰² Camminga, B. (2012, November 6). Interview with Liesl Theron - Director. *Gender Dynamix*. Cape Town.

⁷⁰³ Ibid.

⁷⁰⁴ Ibid.

Otherwise you'll never dream of getting it. The ... interpreter was taking the R1000 and he was giving them [the official] ... R600 and R400 he keep for him.⁷⁰⁵

The interpreter often functions a gatekeeper, bridging the divide between asylum seekers and the officials who are perceived as inaccessible or, as Ava states “they don’t have time for questions”.⁷⁰⁶ Ava adds, though, that if she had the money, she, like Akraam, would pay a bribe and be done with it: in this bureaucratic system “bribery it is life”. Stella also believes that “without money you are nothing” – this was only reinforced by her own experience with an interpreter. At the time of her application, Stella spoke very little English. Just like Kelly, Stella, unable and unwilling to communicate with others in the queue for fear of being assaulted because she was transgender, queued on the wrong day. This led to her being taken in with the wrong nationality group.

I didn’t know how to speak English. All the question I didn’t understand ... I didn’t know how to respond so everything was ‘yes, yes, yes’. So the guy who was the one who complete everything I get a number that is not the same my number and my name and the country was not my country.⁷⁰⁷

Her current documents, the ones she uses to navigate daily life in South Africa, do not reflect her correct name or country. The Legal Resources Centre has said that she might be able to change her name, but that if she tries to change her country, Home Affairs will consider this as fraud and deport her. In order to change her name, she would need to provide proof of identity, which is in her passport from her country of origin. She cannot show this for fear of being accused of fraud.

Issues in relation to perceptions of language are clear in relation to (English-speaking) Ava’s first experience which, once she sat down with an official, was positive:

He was just asking, so you say you gay? Why do you think they will kill you or you will get ill-treated in your country? He was asking me when I arrived ... I was responding to the questions ... the feeling I had he was very friendly to me. He was even complimenting me saying ‘*oh you not even that, yeah I can see you not that stupid like these people I am interviewing that don’t talk English ... you so brilliant*’.⁷⁰⁸

The resentment here on the part of an official who probably, daily, has to hear several cases of trauma in an overburdened system is palpable. Very few interviews go as smoothly as Ava’s. In fact, in South Africa gender refugees along with lesbian and gay asylum seekers find, much to their surprise, that their existence is either denied or treated as an aberration. Both Alex and Tatenda attest to this:

⁷⁰⁵ Akraam

⁷⁰⁶ Ava

⁷⁰⁷ Kelly

⁷⁰⁸ Ava

They gave me a form and I filled in. I said I came here because I am gay and this and that and then I went there to the official working at Home Affairs. She read what I wrote and then she looked at me and said 'Are you gay?' And I say 'yes'. And she say 'Are you [nationality of origin]?' And I say 'yes'. 'But there's no gay people there'. I said 'who told you that? There is a lot of gay people.' Then she tried to fill in, she got for me the permit and then she threw it.⁷⁰⁹

Tatenda's account is perhaps the most dehumanising, as she describes being made to feel "like a thing":

When I got inside it was time for me to be interviewed and I thought like the man who was doing the interviews was also kind of hostile. He was asking me very uncomfortable questions ... like what are you? Which I find very offensive. They would call each other and say come and look you know? I mean I am an adult I can tell when someone is calling that person to say come and have a look here, what we have here and they would speak in their language which they did not realise at that time that I had already familiarised myself with Xhosa so I could hear. It made me feel so uncomfortable ... in fact at one point I stormed out ... I could not just handle the comments.⁷¹⁰

It took Tatenda months, not only return to, but to enter an RRO.⁷¹¹ Once asylum seeker permits are issued it becomes a period of waiting, either to be awarded Refugee Status or to have an asylum claim denied. Although this decision is supposed to take 18 months, the majority of participants have been, and remain, asylum seekers well beyond the allotted decision-making time period. This process of return, queuing and renewal, the inability to travel, becomes almost purgatorial or, as Ava describes it, "being jailed in this Cape Town for the rest of my life".⁷¹²

'There is no Queue for Gender Change'⁷¹³

Benedict Anderson suggests, "everyone can, should, will 'have' a nationality, as he or she 'has' a gender".⁷¹⁴ This may be so, but it is a question of how the State chooses to identify that gender and what it does with it, that intimately impacts on a person's ability to live, and possibly even maintain any form of nationality. Ava was one of the first asylum seekers to access gender-affirming healthcare and transition in South Africa; her story makes clear the ways that gender and nationhood are mutually constitutive – at least this is the case in South Africa currently, but as I will argue need not necessarily be so. In Ava's case the ability to claim rights and protection from the South African state – possibly any state – has become more elusive as she has moved further from the gender/sex she was

⁷⁰⁹ Alex

⁷¹⁰ Tatenda in Ntluli, B. (Executive Producer). (2011, October 20). *The Stories of Several LGBTI Africans Persecuted for Being born LGBTI*. Special Assignment. South African Broadcasting Corporation [Television programme]. Retrieved from <http://oilinternational.com/1982/south-african-broadcasting-corporation-special-assignment-20-october-2011/>

⁷¹¹ Tatenda in Dolan, C., Chapman, A., & Neumann, D. (Directors). (2011). *Getting Out* [Documentary]. Refugee Law Project.

⁷¹² Ava

⁷¹³ Ava

⁷¹⁴ Anderson, B. (2006). *Imagined Communities*. London: Verso, p. 5.

assigned at birth. As it currently stands for gender refugees who embrace a particular iteration of transgender – something that signifies transition to the ‘opposite sex’, while repudiating homosexuality – there is very little room for recognition within the South African asylum system. As noted, The Alteration of Sex Description and Sex Status Act 49 of 2003 does not apply to asylum seekers. This was an issue that was raised at the bill’s initial discussions. However, rights and access to healthcare mean that, as with Ava, access to State-provided gender-affirming healthcare such as hormones is entirely possible. Ava’s experience is similar to those of other participants; she explains her initial feelings regarding her gender:

In our countries, we don’t know really things of gay, lesbian, transgender. We are so ignorant but one knows ... I knew that I was a woman; I knew that I wanted to be a girl. I always used to fight to dress like my sister’s dress, they used to beat me for that ... So I grew up trying to be male but I knew deep down I was a woman.⁷¹⁵

She calls the moment she landed in South Africa – in order to live with her cousins and attend university – a mix of joy and relief. This feeling was only reinforced when her religious cousins immediately warned her about the perils of Cape Town, the “evil city” where “guys want to be girls and girls want to be guys”. For Ava, unbeknownst to her cousins, this was exactly what she had hoped to find:

I started seeing drag queens, masculine girls and things I couldn’t see in my country ... for me to see that, it was something like ‘oh my gosh I am in the right place’. Especially when I saw the guys walking or talking like girls you know? It used to amaze me.⁷¹⁶

Her cousins eventually found out about her desires and confronted her. Striking far closer to home than they themselves understood, they asked her: ‘*Now tell us are you now a woman are you now gay?*’ They became abusive and threatening, withholding food and money. Having nowhere to turn, she was taken in by the Metropolitan Community Church (MCC). In this environment, she began feeling out who she was – growing her hair, piercing her ears and slowly feminising. Knowing she would be unable ever to return safely to her country of origin, she also sought asylum. Initially, Ava identified as gay and so applied for asylum as a gay man. Having to wait in the queue with other asylum seekers, standing with other men began to trouble her feelings regarding her gender, as she explains – alluding the nature of surveillance – as experienced by other participants:

At that time you know I was just a guy ... my hair it was really growing ... these guys ... they saying ‘*oh this he looks Somalian*’, ‘*no a Somali who pierce their ears?*’ So I turned to them and greet them and asked ‘*why you keep arguing?*’ ... ‘*Ah we know you from [Country of Origin]* ... *because no Somali can pierce ears*’ ... ‘*It’s true they don’t but we also don’t*’ ... there was a homophobic comment ... there was this discussion about the Bible and shouting about what the UK has now agreed in place of gays. I was there quiet.⁷¹⁷

⁷¹⁵ Ava

⁷¹⁶ Ava

⁷¹⁷ Ava

Once she began to transition, Ava became concerned about returning to Home Affairs to renew her asylum application, which would mean being faced with asylum seekers from the same region, some of whom already knew her:

I was thinking how these people going to treat me? Now should I go to the women queue? The problem is the security; they come and check if you in the right queue ... so they have to read and they read all the details, so what if they read you are male and you in the queue of females?⁷¹⁸

The closer it came to a time when Ava would have to return to Home Affairs the more anxious she became, and the more documents she accrued – from her doctor, her counsellor and her endocrinologist – to provide proof should anyone confront her. By the time her renewal date arrived, Ava felt that she might exhibit enough physical changes to switch queues without raising the ire of other asylum seekers or security. In relation to her papers, she has some sympathy for the officials. As she explains, they are simply there to do their job – process paper – and if “it says a male you are a male” there is nothing they can do. She does know of one other transgender person that applied for and received refugee status as a woman – Sasha. However, she is aware that this was largely to do with the fact the GDX, through Theron, assisted her and that she, unlike Ava, claimed asylum as a woman from the outset.

[Sasha] ... is trans, she never did medical process ... when she take ... her first paper as a refugee ... she applied as a female straight away ... Different from me who applied as male ... [GDX] fought for her to have a status ... it wasn't to fight against gender it was to fight the power for status.⁷¹⁹

Ava now lives full-time as a woman. Her life currently has reached a stage where carrying asylum papers saying she is male has become at best precarious, as her interaction with the first Home Affairs official to recognise the discordance makes clear:

She saw my paper ... then she looked at me ... Look at the paper and look at me, look at the paper and look at me ... I felt it. I knew what was going on ... She asked me is this your paper? ... I was like ‘yes’, but she can’t deny it because she had to check my fingerprints ... it was positive it was me. Then she looked at me again and then she said, “So what happened?” I told her actually I am in a process, I am transgender ... I always go to Home Affairs with my papers for doctors, I took them out and showed them. She read them and she was like, ‘ok I think you are the first person I have seen, so why don’t you change?’ ... Then she went to the manager and told her the story in front of a whole lot of other people ... he tried really hard to help me ... she was asking permission to actually change the picture and change the gender to female. The manger refused ... then she said “*I feel sorry for you because if the police or something happens, then you will be in trouble. This person here, this paper, and you there is two different people ... This is a legal paper. It is you and everywhere you go in South Africa they will see it’s your fingerprint but it will be a long process. There is no way they can confirm, the only way is here at Home Affairs. It says it’s male but when I see you, you complete female and your face, when I see this face of yours and I see this face on the paper it’s not same person. So if you go to the police or somewhere else, they may even detain you for weeks to try and find out if this paper is you.*”⁷²⁰

⁷¹⁸ Ava

⁷¹⁹ Ava

⁷²⁰ Ava (emphasis added)

The manager suggested that in order to have her documents changed she would need to make a request to the Appeals Board. This is not something Ava has any control over: one cannot call or book to see the Appeals Board. As an asylum seeker one would have to wait to have a decision made regarding one's claim: if that decision is a denial of status then you can address the Appeals Board.

These things of changing papers is only done to South African citizens. They were saying ... if we change her gender, we are naturalising her to South African because she not going to be recognised ... I am not allowed to change that paper because I am not a South African citizen and South Africa has no right to change other nationalities – other people from other countries' genders. If they do so it means I will become definitely a South African because that country does not recognise me as a woman and there is no legal binding paper in that constitution that says they must give me that ... because I am no longer the same person that when I left the country.

Arguably the situation comes down to an issue of citizenship and naturalisation. Ava is not a South African citizen: if the South African state were to change her gender on her asylum paper they would effectively be naturalising her. The country she left does not recognise her as a woman and if South Africa did, she would then no longer legally be the same person who left her country of origin.

Sex/Gender: What are the options?

A critical concern within the South African asylum system, parts of which can be extrapolated to asylum systems (and state systems) globally, in relation to transgender and gender-variant asylum seekers like Ava, is the nature of the wider regulatory framework based on a bifurcated system of sex/gender. For South Africa, as has been argued thus far, this issue is acutely visible both in relation to the queue and the nature of documentation, where one can be read as the physical manifestation of the other – both key sites of discipline and surveillance. V. Spike Peterson argues that the State system, at its heart, is based historically on the differentiation of gender. He adds that the codification of binary sex difference is an outcome of the historical heterosexism that has underpinned much of the creation of the world's legal systems, in large part influenced by western conscripts and understandings of governance.⁷²¹ South Africa, as has been argued in relation to transgender phenomena, is no exception here. The “either/or thinking that this imposes fuels hierarchical constructions of difference and social relations of domination”.⁷²² Since the new millennium, discussion in relation to sex/gender markers, their meaning and utility have been in flux, presenting several options for addressing these issues in South Africa.

⁷²¹ Peterson, V. S. (2010). Political Identities/Nationalism as Heterosexism. *International Feminist Journal of Politics*, 1(1).

⁷²² Ibid., p. 54

Some States, namely Bangladesh,⁷²³ India,⁷²⁴ Pakistan⁷²⁵ and Nepal,⁷²⁶ – countries with historically acknowledged ‘third gender populations’,⁷²⁷ – have added third gender categories to their documentation. Others such as Australia and New Zealand have attempted to expand the possibilities for self-definition, introducing an ‘X’ category on passports; still others, such as the Netherlands, have opened the debate regarding the necessity of sex/gender markers and registration more generally. These are all means through which states have come to administratively accommodate their transgender populations.

The implementation of third gender categories has certainly been possible in countries with historically-acknowledged third gender populations such as the Hijra in India, although there have been complications particularly in relation to the rewriting of dichotomously-based legal systems. In Europe, Germany⁷²⁸ was one of the first countries to recognise what is commonly termed a ‘third or neutral gender category’, although this applies strictly to intersex infants and only in relation to birth certificates.⁷²⁹ Unlike Bangladesh, India and Pakistan, Germany was keen to stress that the creation of a third option was not akin to creating a third gender or ‘other’ box, but rather a very specific solution aimed at assisting intersex cases.⁷³⁰ France has followed a similar route.⁷³¹ Although perhaps more equitable for countries with historically-acknowledged third gender populations who may envision

⁷²³ Karim, M. (2014, November 11). Hijras now a separate gender. *Dhaka Tribune*. Retrieved November 29, 2015, from

<http://www.dhakatribune.com/bangladesh/2013/nov/11/hijras-now-separate-gender>

⁷²⁴ India recognises transgender people as third gender (2014, May 15). *The Guardian*. Retrieved November 29, 2015, from

<http://www.theguardian.com/world/2014/apr/15/india-recognises-transgender-people-third-gender>

⁷²⁵ Radio Free Europe/ Radio Liberty. (2010, June 8). *Pakistan's "Third Gender" Demand Rights Protection*. Retrieved November 30, 2015, from http://www.rferl.org/content/Pakistans_Third_Gender_Demand_Rights_Protection/2065679.html

⁷²⁶ Bochenek, M., & Knight, K. (2012). Establishing the Third Gender Category in Nepal: Process and Prognosis. *Emory International Law Review*, 26.

⁷²⁷ This is constructed slightly differently within each of the Asian nations, but usually as either Transgender, Hijra, ‘Khawaja Sarra’ or ‘Other’.

⁷²⁸ Germany is one of the few countries whose Identity cards do not contain information on sex/gender. See: van den Brink, M., Reus, P., & Tigchelaar, J. (2015). Out of the Box? Domestic and Private International Law Aspects of Gender Registration. *European Journal of Law Reform*, 7(2).

⁷²⁹ Nandi, J. (2013, November 10). Germany Got It Right by Offering a Third Gender Option on Birth Certificates. *The Guardian*. Retrieved November 29, 2015, from <http://www.theguardian.com/commentisfree/2013/nov/10/germany-third-gender-birth-certificate>

⁷³⁰ Ibid.

⁷³¹ Cauterucci, C. (2015, October 15). France Now Recognizes a “Neutral Gender”—but It’s Just As Narrow As the First Two [Web log comment]. Retrieved November 29, 2015, from http://www.slate.com/blogs/outward/2015/10/15/france_s_new_third_gender_is_just_as_narrow_as_the_first_two.html

themselves as neither male nor female, the third gender stance in general has been critiqued for limiting the possibilities for self-definition and reinstating rigid biological determinism.⁷³² In essence adding a third category would be much like adding a third queue, this may well work for Alex who acknowledges ‘standing in the middle’ but for Ava who identifies as a woman this would remain highly problematic. As she points out,

If there was a separate queue ... I would not support it ... even if there were many transgender there would be ... bullying ... being ill-treated ... For me if you a trans its means you are transitioning. You becoming something ... I have this belief ... I know I am a female.⁷³³

Far from restructuring the sex/gender system activist Mauro Cabral has suggested that “adding sex designations is like adding bullets to a Kalashnikov”.⁷³⁴

In 2005, Australia began a wider discussion about the place and necessity of the recording of sex/gender and its concomitant visibility in documents. Both New Zealand⁷³⁵ and Australia have implemented the possibility of identifying as ‘X’ (unspecified or indeterminate) rather than ‘M’ or ‘F’ on passports.⁷³⁶ This shift has impacted on the use of sex/gender on international travel documents such as passports and may eventually have a direct impact on Refugee documents. Assigned by the UN, The International Civil Aviation Organisation (ICAO) controls the standards and stipulations for passports internationally. Under ICAO rules there are in fact three designations for sex on passports – M, F or X. Initially, X was introduced in 1945, as a result of the sheer volume of refugees that needed to be processed following WWII.⁷³⁷ Notably at the time of its creation, nowhere was it stipulated that X would eventually need to be resolved into an M or F designation.⁷³⁸ Currently the ICAO allows ‘X’ as a marker on passports to signify “sex unspecified”.⁷³⁹ This can be utilised in cases where “a person does not wish his/her sex to be identified or where a State does not want to show this data”.⁷⁴⁰ States have to enact this option at the State

⁷³² Ibid.

⁷³³ Ava

⁷³⁴ Carpenter, M. (2013, August 20). *German Proposals for a “Third Gender” on Birth Certificates Miss the Mark*. Retrieved November 29, 2015, from <https://oii.org.au/23183/germany-third-gender-birth-certificates/>

⁷³⁵ The New Zealand Department of Internal Affairs. (n.d.). *Transgender applicants - New Zealand Passports*. Retrieved December 1, 2015, from <https://www.passports.govt.nz/Transgender-applicants>

⁷³⁶ The sex and gender diversity project. (2009). *Sex Files: the legal recognition of sex in documents and government records*. Human Rights and Equal Opportunity Commission.

⁷³⁷ Oii Australia. (2011, October 9). On Australian passports and “X” for sex. *Oii Australia – Intersex Australia*. Retrieved June 4, 2015, from <https://oii.org.au/14763/on-x-passports/>

⁷³⁸ Ibid.

⁷³⁹ International Civil Aviation Organization (ICAO). (2015). Part 4: Specifications for Machine Readable Passports (MRPs) and other TD3 Size MRTDs. In *Doc 9303 Machine Readable Travel Documents Seventh Edition* (pp. 1–38). ICAO, p. 14.

⁷⁴⁰ Ibid.

level for it to function, as has been done by Bangladesh, Australia and New Zealand.⁷⁴¹ In 2012, the ICAO released a report addressing the need for continued use of gender markers on travel documents. Benefits to removing sex/gender included: fewer problems with regards to travellers' genders not reflecting those of documents; fewer documents with incorrect biodata information; and as a means to "pre-empt calls for change and show ICAO is a future focused organisation".⁷⁴² Regardless, it was held at the time of report that the prohibitive costs of removing gender – since border control software would need to be upgraded and modified – outweighed the benefits. However, it was suggested that this would need to be reassessed.⁷⁴³

The Netherlands has perhaps been the most far-reaching in discussions regarding the necessity of gender markers. In 2012, the Dutch organisation Feministisch Netwerk GroenLinks (FEMNET) began a campaign for the "abolishing of gender as a legal distinction".⁷⁴⁴ The group has argued that sex/gender is a private matter much like ethnic origin, sexual orientation, and political opinion, and that if States are determined to treat people equally, with no distinction or difference, then there is no need for sex/gender to be registered. Moreover, given the continuing issues worldwide resulting from doing so, they have argued it has become increasingly evident that sex/gender is too complex to register. As they point out, the most common argument for maintaining sex/gender is the need for positive discrimination, but society is able to practice this in relation to ethnic minorities and disabilities without either being registered or directly visible on documents.⁷⁴⁵ For FEMNET the registration of sex/gender continues to affirm for society – regardless of what might be argued about social construction – that there are two kinds of people and that the difference between them is so essential that it must be registered.⁷⁴⁶ Dutch legal scholar Marjolein van den Brink argues that if sex/gender was removed, society would be less concerned with people who did not fit within strict dichotomy. Moreover, since the law

⁷⁴¹ Egale Canada. (2011). *Policy Paper: "Sex" Inscriptions on the Canadian Passport*. Toronto. Retrieved from http://egale.ca/wp-content/uploads/2013/01/extra_1558.pdf p. 6.

⁷⁴² New Zealand (Presented by). (2012). *A Review of the Requirement to Display the Holder's Gender on Travel Documents* (No. T AG/MRTD/21-IP/4). *International Civil Aviation Organization Information Paper*. Montreal p. 2

⁷⁴³ *Ibid.*, p. 3.

⁷⁴⁴ Feministisch Netwerk GroenLinks. (2011). *Verplicht veld? Pleidooi voor verkennen van mogelijkheden voor afschaffen van geslacht als juridisch onderscheid*. Retrieved from https://femnet.groenlinks.nl/sites/default/files/downloads/page/verplicht_veld.pdf, p. 4.

⁷⁴⁵ *Ibid.*, p. 10.

⁷⁴⁶ van den Brink, M. (2009). Onpraktisch, oninteressant en ongepast. In M. de Boer & M. Wijers (Eds.), *Vrouw & Recht: De beweging, de mensen, de issues*. Amsterdam: Pallas Publications, p. 167.

would no longer function as a means of constantly confirming the relevance of gender, it could be an effective step towards the fight against sex discrimination more widely.⁷⁴⁷

There have certainly been visible legal challenges by transgender people in relation to rights and identity issues on the African continent. Victor Mukasa won a court battle against the Attorney General of Uganda in 2008, which established that the articles of Uganda's Constitution, in particular the right to privacy and freedom from torture or inhumane and degrading treatment, apply to all people regardless of sexual orientation and/or gender identity.⁷⁴⁸ This certainly may create some room for challenge regarding gender/sex and identity categories in the future.⁷⁴⁹ Audrey Mbugua, a trans activist from Kenya, won a court battle in 2014 to have her name amended on her official school-leaving certificate.⁷⁵⁰ Along with this, Mbugua – as noted in the introduction – has also been involved in a case in the Kenyan High Court lead by Solomon Gichira, an LGBT rights activist, to establish a third gender category for people who do not identify as male or female.⁷⁵¹

Anne Fausto Sterling has argued, perhaps as a kind of middle ground in order to ensure legal protection for all – but particularly those who are 'gender-diverse' – that the elimination or suppression of the category of "gender" from official documents, such as driver's licenses and passports, would be most prudent. As she notes: "surely, attributes both more visible (such as height, build and eye colour) and less visible (fingerprints and genetic profiles) would be more expedient".⁷⁵² To suggest that South Africa consider either suppressing or ending the registration of gender/sex is not outlandish, particularly as the country has been moving towards a Smart Card biometric-based identity system which

⁷⁴⁷ Ibid., p. 168.

⁷⁴⁸ HIVOS. (2008, December 23). *HUMAN RIGHTS VICTORY: Ugandan Transgender, Lesbian and Gay Human Rights Upheld In the High Court of Uganda*. hivos.net. Retrieved from <http://www.hivos.nl/dut/content/download/7637/50427/file/Press%20Release%20Uganda%20Human%20Rights%20Court%20Case.pdf>.

⁷⁴⁹ The United Nations Commission Against Torture recently released findings regarding the Convention Against Torture, explicitly recommending "the repeal of "abusive" preconditions to legal gender recognition, and calling for respect for transgender people's "autonomy and physical and psychological integrity". These arguably could be extended to wider legal litigation, with regards to legal gender recognition in relation to necessary documentation. Yeung, G. (2016, May 26). *Using the Convention Against Torture to Advance Transgender and Intersex Rights*. Retrieved May 26, 2016, from <http://ohrh.law.ox.ac.uk/using-the-convention-against-torture-to-advance-transgender-and-intersex-rights/>

⁷⁵⁰ Chigorimbo, S. F. V. (2015, November 27). *Africa: International – Where Are Diverse Gender Identities in the Sixteen Day Campaign?* Retrieved December 1, 2015, from <http://allafrica.com/stories/201511271282.html>

⁷⁵¹ Matata, L. (2015, December 2). Identifying as Neither Male Nor Female, Some Kenyans Seek a Third Option on Official Documents. *Global Press Journal*. Retrieved December 2, 2015, from <http://globalpressjournal.com/africa/kenya/identifying-neither-male-nor-female-some-kenyans-seek-third-option-official-documents>

⁷⁵² Fausto-Sterling, A. (2000). The Five Sexes, Revisited. *The Sciences*, (July/August), p. 23.

would be also be available for refugees registered since at least 2004.⁷⁵³ In fact, this is a point that was raised in 2012 by intersex activist Sally Gross, along with GDX, in discussions regarding the poor implementation of Sex Description Act and the need for regulations with the Portfolio Committee for Home Affairs. Those present seemed quite amenable to the suggestion. As Gross notes:

A major impediment actually ... with ID, are derived from the fact that identity numbers encode gender ... this is at the route [sic] of many ... difficulties ... We recommend that gender encoding of ID numbers simply be removed ... If ID was shifted to a biometric system it would actually remove the problem because fingerprints or retinal patterns do not change then the issue of gender would become irrelevant. So that would be rather an elegant solution.⁷⁵⁴

In essence: the DHA may need to collect information regarding the gender/sex of asylum claimants, but this does not necessarily mean that this information needs to be reflected on documentation in general. However, doing away with sex/gender on asylum documents would not be enough in that this would simply create a secondary system of differentiation between South African IDs and asylum documents. Anecdotal evidence in this area suggests that differentiating IDs only heightens discrimination and social exclusion – as for instance in the period when asylum seekers in South Africa received maroon identity documents to differentiate them from the green identity documents of South Africans.⁷⁵⁵ Gross, in her conversations with the Portfolio Committee, was suggesting this as an option for South African society in general, but it would nevertheless most certainly have an impact on refugee documents and asylum papers.⁷⁵⁶ In essence, it would not be about abolishing categories but rather mooting them, disinvesting from them while allowing people the room to self-identify – something called for by the International Bill of Gender Rights, as noted in chapter two, supported and distributed by Phoenix back in 1993.⁷⁵⁷ A vision of a combined queue in which the queuers may have specific gender/sex designations across a spectrum of possibility. Security would be unable to ascertain this from documents, but more than this, ascertaining sex/gender would have no point.

⁷⁵³ Rulashe, P. (2004, May 1). *Refugees lobby for identity in South Africa*. Retrieved December 1, 2015, from <http://www.unhcr.org/406c1c3c4.html>

⁷⁵⁴ Portfolio Committee on Home Affairs. (2012). *Gender DynamiX on Alteration of Sex Description & Sex Status Act implementation; Lawyers for Human Rights on Statelessness; CoRMSA on Closure of Refugee Reception Offices in metro areas*, Department of Home Affairs. Cape Town: Parliamentary Monitoring Group.

⁷⁵⁵ Belvedere, M. F. (2007). Insiders but Outsiders: The Struggle for the Inclusion of Asylum Seekers and Refugees in South Africa. *Refuge*, 24(1), p. 63.

⁷⁵⁶ The Smart Cards were meant to phase out the maroon refugee identification documents as early as 2005, although this has yet to take place. See: Human Rights Watch. (2005). *Living on the Margins: Inadequate protection for refugees and asylum seekers in Johannesburg* (Vol. 17) 15A. Human Rights Watch, p. 35.

⁷⁵⁷ *FanFare*. (July 1991). *FanFare* (52) Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at 'Joy Wellbeloved Collection' – GAL0013, Johannesburg, William Cullen Library, University of the Witwatersrand.

Conclusion

The asylum process in South Africa, as reported by myriad organisations and international bodies, is by no means easy for anyone.⁷⁵⁸ It is widely acknowledged that the system is overburdened, generally corrupt, and poorly managed, but there are specific issues that make this process that much more difficult for gender refugees. Some of these are peculiar to the South African system: the queue, the denial of identity by South African officials, and the inability to have transition acknowledged on documents. These issues, I argue, indicate wider structural concerns regarding the facilitation of the movement of people, not only in South Africa. They also suggest that gender refugees present something of an anomaly within the South African asylum system. Scholars have certainly grappled with this issue in the recent past but notably it has only been in relation to the relatively privileged position of international air travel or licensing documents.⁷⁵⁹

Certainly, South Africa could follow any one of the options suggested regarding expanding or suppressing categories. Given that one of the major issues the Department encounters with gender refugees, as in the case of Ava, is the acknowledgement of a sex/gender not acknowledged in country of origin, suppressing categories altogether might be most suitable to overcoming this impasse. Evidently though, the most urgent steps would be to address the shortcomings of the Sex Description Act. It is clear that Home Affairs is completely unprepared to deal with the social and legal needs of transgender asylum seekers like Ava or Stella. The Sex Description Act, in and of itself, in its exclusion of asylum seekers (an issue raised in its very creation, as noted in chapter two) is a clear oversight. Furthermore, over ten years since its creation, given the developments in countries such as Malta⁷⁶⁰ and Argentina,⁷⁶¹ the Act is in some senses already outmoded. Arguably, it has never truly been implemented, lacking clear regulations and protocols from the DHA in order to be so.⁷⁶² Beyond this, the structure and consequent issues with the queue point to

⁷⁵⁸ See for instance: Amit, R. (2015). *Queue Here for Corruption: Measuring Irregularities in South Africa's Asylum System*. Johannesburg: Lawyers for Human Rights African Centre for Migration and Society.

⁷⁵⁹ Currah, P., & Mulqueen, T. (2011). Securitizing Gender: Identity, Biometrics, and Transgender Bodies at the Airport. *Social Research*, 78(2), p. 557.

⁷⁶⁰ Malta's recent Gender Identity, Gender Expression and Sex Characteristics Act, which unlike in South Africa applies to refugees and asylum seekers, allows parents and guardians to "postpone the inclusion of a gender marker on the birth certificate until the child's gender identity is determined" – Transgender Europe (TGEU). (2015, April 1). *Malta Adopts Ground-breaking Trans and Intersex Law*. Retrieved from <http://tgeu.org/malta-adopts-ground-breaking-trans-intersex-law/>

⁷⁶¹ Schmall, E. (2012, May 24). *Transgender Advocates Hail Law Easing Rules in Argentina*. Retrieved May 26, 2016, from <http://www.nytimes.com/2012/05/25/world/americas/transgender-advocates-hail-argentina-law.html>

⁷⁶² Legal Resources Centre (LRC) and Gender Dynamix (GDX). (2015). *Briefing Paper: Alteration of Sex Description and Sex Status Act, No 49 of 2003*. Retrieved from <http://genderdynamix.org.za/wp-content/uploads/LRC-act49-2015-web.pdf>

the wider maintenance of a dichotomously-structured society based on a “binary coding of polarised and hierarchical male/masculine and female/feminine identities”.⁷⁶³ The queue signals the perception of Home Affairs that there are two, and only two, sex/genders – discernible, definable and easily differentiated. Moreover, gender is often determined by what the security guards see when they move up and down the queues checking that people are in the ‘right’ place. As Luibheid argues, however, it is not about individual officials, although they do carry prejudice, but rather the make up and underlying assumptions of the system itself – the “techniques and systems of knowledge on which its daily operations depend”.⁷⁶⁴

Transgender the world over, in its many geopolitical iterations, questions the need for gender to be visible on identity documents. As categories expand, collapse, solidify and possibly disappear, legal systems will need to adjust to recognise people as human beings rather than sex/genders. Transgender asylum seekers in many senses inhabit what Darren Rosenblum refers to as the “bottom rung” of society, in that they find themselves in a most precarious position, because they rely most acutely on the State to protect them. State systems, for their part, cannot adequately protect what they cannot acknowledge.⁷⁶⁵ This is a key site from within which to understand what it is that transgender does. It functions as a sign of heightened structural visibility in spaces like the queue, or at the border, but a sign of bureaucratic erasure in spaces like the RRO. In the latter, gender – as dichotomous and anatomically legible – is conceptualised in such a way that it excludes “the bodies and experiences of transsexual and transgender people, and ... informs the taken-for-granted work of institutions”.⁷⁶⁶

⁷⁶³ Peterson, V. S. (2010). Political Identities/Nationalism as Heterosexism. *International Feminist Journal of Politics*, 1(1), p. 39.

⁷⁶⁴ Luibheid, E. (2002). *Entry Denied: Controlling Sexuality at the Border*. Minneapolis: University of Minnesota Press, p. 53.

⁷⁶⁵ Rosenblum, D. (2000). “Trapped” in Sing Sing: Transgendered Prisoners Caught in the Gender Binarism. *Michigan Journal of Gender Law*, 6.

⁷⁶⁶ Namaste, V. K. (2000). *Invisible Lives: The Erasure of Transsexual and Transgendered People*. University of Chicago Press, p. 137.

Chapter Five: Finding Community, Finding Rights

Coming to South Africa, for transgender-identified people from other parts of Africa, is a bid to establish a life that is both liveable and legible. It is a venture undertaken in order to end the constant shifting, which survival necessitates, within governance systems and communities in countries of origin; between different iterations of home and places of safety. It is also a bid to exit the borderlands, to have 'humanness' conferred through the rights of *human* rights – recognitions and freedoms that they believe exist and they will be entitled to through the South African Constitution in relation to their transgender identity. It may not necessarily mean moving entirely from the margins of society for all participants, since transgender for gender refugees is a broad-ranging commingling of gender expression and sexuality, but it may mean so for some participants. For those who specifically seek asylum, it is an active step towards refuge as a human right that is offered by the South African State. It is an active step to claim protections accrued under international law, for gender refugees in particular, through an exposure of self-identity which concomitantly is the self-same reason for their persecution. In referring back to chapter three and the genesis of this journey to South Africa, it is a step aimed at grasping life, evading death as a member of a population marked out as acceptable targets of violence (within countries of origin). In essence, a step to come out of the borderland to be part of a legal, protected, and acknowledged populous, interpolated as within the bounds, or imaginary, of the country's perceived cultural representations.

This chapter argues that categories of sex/gender are not something perniciously employed by the State to ensure that those who do not perform in adequate and accepted ways are marginalised and excluded, but an all-pervasive system of human recognition and exclusion. Once exiting the Refugee Reception Office (RRO), South African society, rights notwithstanding, practices prejudice and forms of exclusion in reaction to perceived sex/gender incongruences. In fact, what gender refugees encounter beyond the doors of the RRO is the "common sense"⁷⁶⁷ reading of sex/gender – a binary system of classification⁷⁶⁸

⁷⁶⁷ Geoffrey C Bowker and Susan Leigh Starr do not actually give a concise definitions of common sense themselves, but draw on George Lakoff to give content to their use of "common sense":

"My guess is that we have a folk theory of categorisation itself. It says that things come in well-defined kinds, that the kinds are characterised by shared properties, and that there is one right taxonomy of the kinds. It is easier to show what is wrong with a scientific theory than with a folk theory. A folk theory defines common sense itself. When the folk theory and the technical theory converge, it gets even tougher to see where that theory gets in the way, or even that it is a theory at all". Source: Lakoff, G. (1987). *Women, Fire, and Dangerous Things: What Categories Reveal about the Mind*. In G. C. Bowker & S. L. Star, (Eds.), (2000). *Sorting Things Out* (pp. 195-227, Chapter 6: "The Case of Race Classification and Reclassification under Apartheid"). Cambridge: MIT Press. (Original work published 1987, University of Chicago Press).

⁷⁶⁸ "A classification is a spatial, temporal, or spatio-temporal segmentation of the world. A "classification system" is a set of boxes (metaphorical or literal) into which things

which appears neutral and natural and is taken for granted.⁷⁶⁹ In this system of classification beyond the doors of the RRO, participants encounter “a much less formal, more prototypical approach us[ing] an amalgam of appearance and acceptance – and on-the-spot visual judgement ... to perform the sorting process on the street”.⁷⁷⁰ Indeed, ‘common sense’ reads sex/gender as stable, obvious and clear. This ‘common sense’ reading, far from embracing gender refugees, or even transgender, reignites the processes of exclusion and borderland corralling experienced in countries of origin. The difference between South Africa and countries of origin is perhaps the existence of rights, which may exonerate the South African State from direct necropolitical⁷⁷¹ responsibility – unlike, as argued in chapter three, for countries of origin – but not from neglect.

This chapter questions the possibility of becoming part of the imaginary in South Africa – finding and entering into community – and what impact this has on being able to access rights for gender refugees. It argues that without community, without a home, a reliance on the fact that one is human and therefore entitled to human rights may not be enough to ensure or secure ‘liveability’ or a liveable life.⁷⁷² Taken to its logical conclusion, this chapter argues that if “(normative) gendered embodiment is human embodiment and (normative)

can be put to then do some kind of work” – Bowker, G. C., & Star, S. L. (Eds.), (2000). *Sorting Things Out*. Cambridge: MIT Press, p. 10.

⁷⁶⁹ I utilise ‘common sense’ as it pertains to gender here in a Gramscian sense to suggest that it inheres in “everyday unconsidered conceptions ... that which is taken for granted, understood, implicit, nonpropositional, and tacit in our way of understanding the world”. Source: Shotwell, A. (2011). *Knowing Otherwise: Race, Gender and Implicit Understanding*. Penn State Press, p. 33.

⁷⁷⁰ Bowker, G. C., & Star, S. L. (Eds.), (2000). *Sorting Things Out*. Cambridge: MIT Press, p. 201.

⁷⁷¹ Here I am referring to my use of necropower in chapter three, defined by Achille Mbembe as: “the various ways in which, in our contemporary world, sovereign power imagines itself and is deployed in the interest of maximum destruction of persons and the creation of deathscapes, new and unique forms of social existence in which vast populations are subjected to conditions of life conferring upon them the status of living dead”. Source: Mbembe, A., & Holler, C. (2007, March 17). *Africa in Motion: An interview with the post-colonialism theoretician Achille Mbembe*. Retrieved April 29, 2015, from <http://www.metamute.org/editorial/articles/africa-motion-interview-post-colonialism-theoretician-achille-mbembe>

⁷⁷² I use liveability here in the Butlerian sense of the term. A liveable life is affected by both socio-economic conditions – shelter, food and employment – and conditions of intelligibility. As Butler states, “When we ask what makes a life liveable, we are asking about certain normative conditions that must be fulfilled for life to become life. And so there are at least two senses of life, the one that refers to the minimum biological form of living, and another that intervenes at the start, which establishes minimum conditions for a livable life with regard to human life. And this does not imply that we can disregard the merely living in favour of the liveable life, but that we must ask, as we asked about gender violence, what humans require in order to maintain and reproduce the conditions of their own livability. And what are our politics such that we are, in whatever way is possible, both conceptualizing the possibility of the livable life, and arranging for its institutional support?” Source: Butler, J. (2004). *Undoing Gender*. New York: Routledge, p. 39.

human being is gendered being”⁷⁷³, gender refugees find themselves highly visible yet, paradoxically, impossible in the very moment they turn to the State for asylum/rights/protections as transgender-identified people. It is those participants who are not visible in this particular manner who specifically choose “*not to chase rights*”;⁷⁷⁴ having found ways and means to circumnavigate the refugee system and elude the State, they experience a liveable life. In particular, it is the participants who avoid the asylum system altogether and are able to pass as their desired, though normative, binary gender within South African society who have, to some degree, exited the borderlands, finding their community to be humanity.

I Dreamed of Cape Town

Although perhaps in a moment of elation at having arrived and received asylum documentation, what welcomes gender refugees on the other side of the RRO process is not a gender-free egalitarian utopia but rather a society constructed similarly to the ones they have left. There are key differences, though: these include the presence of constitutional-legal protections, gender-affirming healthcare and perhaps a term of self-description in wider circulation – transgender. Gender in South Africa, as elsewhere, is part of the structural fabric of society, visible at both micro and macro levels. However, in day-to-day life, in interactions with communities and individuals, it is very rare to see anyone trying to match documents to appearance; rather, sex/gender is based on ‘common sense’ – classified according to the assumption that gender is obvious, clear, legible and coheres to male/masculine/man and female/feminine/woman.⁷⁷⁵

Exiting an RRO, the most immediate need for newcomers is shelter. South Africa does not practice encampment but rather a system of local integration, meaning that asylum seekers in the country experience freedom of movement. As noted by Ali Brizan Okollan, who works for Upper Rift Minorities (URM) based in Kenya – an organisation assisting LGBT asylum seekers currently living in the Kakuma Refugee Camp – this is a key drawback:

One of the reasons that people want to come in South Africa is the concept of local integration. That is the driving force ... even when you discuss ... some of them are saying I better not go to States I better go to South Africa and be locally integrated.⁷⁷⁶

⁷⁷³ Thomas, K. (2006). Afterword: Are Transgender Rights *Inhuman Rights*? In P. Currah, R. M. Juang, & S. P. Minter (Eds.), *Transgender Rights*. London: University of Minnesota Press, p. 316.

⁷⁷⁴ Arthur

⁷⁷⁵ Knight, K., & Rumbach, J. (2014). Sexual and Gender Minorities in Humanitarian Emergencies. In L. W. Roeder Jr (Ed.), *Issues of Gender and Sexual Orientation in Humanitarian Emergencies: Risks and Risk Reduction*. New York: Springer International, p. 48.

⁷⁷⁶ Camminga, B. (2015, April 22). Interview with Okollan, A. B. *Upper Rift Minorities (URM)*. Cape Town

Rather than keeping refugees on the outskirts of societies in camps, often even cordoned off from the population of the camp itself,⁷⁷⁷ local integration presents the prospect of community acceptance and coexistence. It is unsurprising then, given this freedom of movement, that the majority of participants make their way to Cape Town – the Pink Capital⁷⁷⁸ – believing they will find a place that offers integration, acknowledgement and a visible community waiting to embrace them. Sasha expected Cape Town to be much like Thailand or Brazil, countries with highly visible transgender populations.⁷⁷⁹ Although she did meet several other transgender people through a support group it was far fewer than she expected.⁷⁸⁰ Moreover, those she did encounter seemed to her to be in hiding rather than living a life of unbridled freedom. For Daniel, this perception that in Cape Town he would finally be free and see others like him was so all-encompassing that after running out of money in Zimbabwe he riskily hitched, with his bag of dresses, the length of South Africa – a country about which he knew little – to get to the city:

I remember the day I arrived in Cape Town ... It was a Sunday morning. I stood on the main road waiting ... Have you ever seen someone who is standing but sleeping? I was about to fall down I was so tired ... I don't have real food I just have biscuits and water ... it was too much for me ... the trailer came ... By the time I sat in this guy's trailer, I don't even know how I can explain this, it was like I am feeling I have already reached Cape Town. I was feeling so happy ... I was seeing new life and that each and everything will be perfect for me ... by the time I saw Cape Town ... I thought what a beautiful city.⁷⁸¹

⁷⁷⁷ Arguably a physical manifestation of the borderland. In the Kakuma Camp, LGBT asylum seekers are currently kept together in a separate area in the camp, easily identifiable to other asylum seekers as targets of violence.

See: Senzee, T. (2014, August 16). *Four Questions Reveal Horrifying Situation for LGBTs in Kenyan Refugee Camps*. Retrieved August 20, 2014, from <http://www.advocate.com/world/2014/08/16/four-questions-reveal-horrifying-situation-lgbts-kenyan-refugee-camps>; Igunza, E. (2015, November 10). *Gay Ugandans regret fleeing to Kenya*. Retrieved December 1, 2015, from <http://www.bbc.co.uk/news/world-africa-34764968>

⁷⁷⁸ Cape Town Tourism markets the City as *The Pink Capital*, “for visitors who are out and proud, and looking for a city that embraces this freedom, Cape Town is where it’s at for a weekend of ‘fabulous’”. See: Pink Capital Cape Town Says Hello Weekend. (n.d.). *Cape Town Tourism*. Retrieved December 14, 2015, from http://www.capetown.travel/press_releases/entry/pink-capital-cape-town-says-hello-weekend

⁷⁷⁹ ‘Sasha’. Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Gender Dynamix Collection – GAL108’, Johannesburg, William Cullen Library, University of the Witwatersrand

⁷⁸⁰ The Triangle Project, an NGO based in Cape Town, runs the Triangle Transgender Support Group. Several participants have been members of this group at various stages. Trans-specific health services like support groups are limited in South Africa. See: SAPA. (2014, December 16). *Support services for the transgender community are in short supply says GDX*. Retrieved December 1, 2015, from <https://www.enca.com/south-africa/support-service-transgender-community-are-short-supply-says-gdx>

⁷⁸¹ Daniel

Yet, without predetermined places to stay, family members and in-country community networks are the only means of shelter for those not being directly assisted by NGOs (which, though they provide support, do not generally provide shelter). These networks are crucial, but prejudices held by communities from countries of origin or family members, who may also be migrants, are not simply abandoned at the border. Moreover, participants are not the only subjects that travel within these networks – gossip inevitably follows. Along with this there is a heightened tension: on the one hand, the increased transgender and gay visibility that participants witness around them fuels the desire to immerse themselves in their new found freedom by presenting their gender identity more fully; on the other hand, their communities and the places wherein they seek shelter maintain the same attitudes as before. It is in the process of seeking out these others, the immersion, that fissures begin to appear. Alex, on arriving in Cape Town, initially stayed with their cousin:

My mother called to tell him, “he left because there was something wrong, I think he’s homosexual” ... Then you know when I start researching where can I find LGBTI people in Cape Town ... I didn’t know that my cousin was following me ... He kicked me out and that’s when I found myself homeless.⁷⁸²

Akraam is an interesting case in this regard: for two years she lived with her aunt in Cape Town, within her country of origin’s tightly-knit community, presenting as a man and knowing virtually nothing about Cape Town. By chance she saw an advert for the ‘gay village’:

On Google ... I start searching for gay clubs. I didn’t know there were gay clubs in the world! I didn’t know that there were gay things. Even though I lived here because I was with my people⁷⁸³.

Much like Alex, Akraam went in search of these newly-discovered gay clubs:

I saw people like me dancing ... everywhere. In the street walking. Then I said, “What’s happening here? Where am I?” I was like does this really exist? I was so shocked I couldn’t even express how I was. It makes you feel happy ... I was in an isolated world. So many people like me dancing, so open I was so excited.⁷⁸⁴

However, this visibility and being able to enter social spaces is not commensurate with gaining access to a new form of community, acceptance or support. Much like Alex, Akraam was eventually confronted by her aunt and her cousins:

They didn’t talk to me they just started beating me up ... They took my front tooth out [when she was punched] ... and they told me never to come back to their neighbourhood.⁷⁸⁵

⁷⁸² Alex

⁷⁸³ Akraam

⁷⁸⁴ Akraam

⁷⁸⁵ Akraam

Being ordered not to return to “their neighbourhood” is pivotal here because it is in fact an ousting from the greater country-of-origin community. At a loss after their rejection, both Akraam and Alex moved to Johannesburg fairly soon after being evicted. Having nowhere else to go, they both tried to integrate with the very same country-of-origin community that had rejected them in Cape Town. Both, in shifting to a new city, removed any and all signs that could possibly suggest a deviation from ‘common sense’ readings of sex/gender.

The First Loss: Home

Hannah Arendt in *The Origins of Totalitarianism* provides a critique of human rights, arguing that belonging to a community – either a State or an organised human community – is fundamental to rights access. Moreover, that “a person loses the right to have rights when she can neither belong to the community into which she is born nor find a new community in which to live”.⁷⁸⁶ Arendt argues that it is one of the perplexing features of the Declaration of the Rights of Man that although human rights have been defined as inalienable, and independent of all governments, in the moment that human beings lack their own governments and have to fall back upon their minimum rights qua being human, these rights become unenforceable.⁷⁸⁷ Those seeking to access human rights, in particular asylum seekers, she argues, have, in increasing numbers, entered a state of what she describes as rightlessness where they “become *nothing but human*”.⁷⁸⁸ This is particularly true for people she calls “new refugees”: those “persecuted not because of what they [have] done or thought, but because of what they unchangeably [are] – born into the wrong kind of race or the wrong kind of class” – and, I would add, the wrong kind of sex/gender.

Arendt argues that rather than the loss of rights, which paradoxically gender refugees possibly for the first time, actually have as transgender-identified people in South Africa, it is the slow loss or the non-existence of community, “willing and able to guarantee any rights whatsoever”⁷⁸⁹ that pushes them into the borderlands of society. It is this that begins to enact a state of “rightlessness”.⁷⁹⁰ This state of ‘rightlessness’, which is crucially linked to these ‘common sense’ adjudications of gender, is not the same as being without rights, but rather it entails two distinct deprivations that are pivotal to the experiences of being a gender refugee. The first is that of home, “the loss of the entire social texture into which they were born and in which they established for themselves a distinct place in the

⁷⁸⁶ Parekh, S. (2008). *Hannah Arendt and the Challenge of Modernity: A Phenomenology of Human Rights*. New York: Routledge, p. 40.

⁷⁸⁷ Ibid., p. 34.

⁷⁸⁸ Ibid., p. 25.

⁷⁸⁹ Arendt, H. (1962). *The Origins of Totalitarianism*. New York: Meridian Books, p. 297.

⁷⁹⁰ Ibid., p. 295.

world”.⁷⁹¹ For Arendt, what is unprecedented about this particular loss is not the loss of home itself but the “impossibility of finding a new one”.⁷⁹² The second loss, which this chapter will address later, is that of protection or security – the loss of legal status, not just in countries of origin but in all countries. Arendt argues that the world functions as an intricate web of treaties and international agreements, often mediated – as argued in chapter three – through passports and papers, allowing a person to take their legal status with them wherever they go. Whoever is no longer enclosed within this web “finds himself out of legality all together”.⁷⁹³ Kendall Thomas extends Arendt’s argument, noting that transgender people – read as “violating the rules of the (normative) gender contract” – are thus often considered to have lost all qualities that make it possible to be seen or treated as a human beings.⁷⁹⁴

Home, as noted in this thesis thus far, is a perplexing site. The familial home is often a site of some difficulty for gender refugees, though this is not the case for all. Certainly, the home that is represented by the State or country of origin, as has been argued, is a space that becomes increasingly treacherous to navigate as gender refugees reach adulthood, particularly in relation to issues of legality. This is the home that is left, in the hopes of establishing a new home in South Africa. Critically, this new home is invested with an idea that gender refugees might be protected and be imagined as part of the populous within the country. Gender refugees’ first experiences – those with Home Affairs – raise questions over the possibility of this home, as argued in chapter four. Beyond the doors of the RRO, in a country that practises local integration, home is necessitated by finding and accessing a community: other transgender people, or country-of-origin members or family. As noted, all three of these sites present difficulties in terms of lack of visibility – as illustrated by Sasha and Daniel – continued prejudice by country-of-origin members, and familial exclusion – as illustrated by Akraam and Alex. For Arendt, it is this seeming impossibility of establishing a new home, finding community, that is a key element to ‘rightlessness’. As Alex highlights,

I went to Johannesburg and when I was there it was worse because I was staying with [people from country of origin] ... there are so many people ... so it was like ‘Am I in my home country or what?’ ... One day I went to [country of origin] ... church. I put on some make -up, it was just a little bit of powder to look more smart and then the Pastor he called me in front of people ... The Pastor say “The whole church must pray for this guy because there is a problem with this guy. He has got the evil spirit. Can you see?” They just start praying ... when they finish I took my bag and left ... I say I cannot stay anymore in Johannesburg and so I came back to Cape Town.⁷⁹⁵

⁷⁹¹ Arendt, H. (2000). The Perplexities of the Rights of Man. In P. Baehr (Ed.), *The Portable Hannah Arendt*. New York: Penguin Books, p.34.

⁷⁹² Ibid., p.34.

⁷⁹³ Ibid., p.35.

⁷⁹⁴ Thomas, K. (2006). Afterword: Are Transgender Rights Inhuman Rights? In P. Currah, R. M. Juang, & S. P. Minter (Eds.), *Transgender Rights*. London: University of Minnesota Press, p. 317.

⁷⁹⁵ Alex

As with Alex, the reasons for Akraam's shifting inevitably followed:

Some of the people in Cape Town move to Joburg and they were related to the boss that I was working for. They told him, "This person that is working for you do you know him?" He's like, "no I don't know him. I just like hired him as [same country of origin] ... he seems to be a good person." They told him, "He is not good. He is gay. Everyone knows him in Cape Town"⁷⁹⁶.

Akraam was subsequently fired from her job and assaulted by a mob from the local community, who meant to kill her. A truck driver passing the scuffle intervened and took the unconscious Akraam to hospital. After being released, Akraam, who by far had been the most cloistered and isolated from others like her for much of her life, almost incomprehensibly paid for a night at a Backpackers' that specifically catered to people from her country of origin, situated within the self-same neighbourhood as her assailants. Unsurprisingly, they found her and confronted the owner of the Backpackers':

Do not let this evil person sleep in your house otherwise Allah will bring punishment on your building and it will burn". The lady says I have to go. I tried to tell her ... "I don't have anywhere to go".⁷⁹⁷

The assaults here experienced by Alex and Akraam, transgressive bodies, as evidenced by the pierced ears and the wearing of make-up, are "fundamentally concerned with policing gender presentation".⁷⁹⁸ The constant return to communities that present threats of violence suggests the clear lack of structural support; thus do patterns of exclusion, 'strangerness', and shifting for survival begin to repeat themselves. It should be noted here that Alex's and Akraam's narratives – explaining what it might mean to navigate an attempt at establishing community and by extension, home – may seem extreme in their experience of consistent exclusion and violence. Indeed, both were beaten and stabbed, and for Alex this happened more than once. Given that the UNHCR has resettled⁷⁹⁹ between 11 000 and 19 000 people from Africa, yearly, between the years of 2012 and 2014, it is significant that both Akraam and Alex's cases were considered severe enough to be resettled from South Africa. Tiwonge Chimbalanga is also in the process of applying for resettlement.⁸⁰⁰

⁷⁹⁶ Akraam

⁷⁹⁷ Akraam

⁷⁹⁸ Namaste, V. K. (2000). *Invisible Lives: The Erasure of Transsexual and Transgendered People*. University of Chicago Press, p. 136.

⁷⁹⁹ The exact figures are: 11 342 in 2012, 14 858 in 2013 and 19 251 in 2014. Figures for 2015 and 2016 were unavailable at the time of writing. Source: UN High Commissioner for Refugees (UNHCR). (2015). *UNHCR Global Resettlement Statistical Report 2014*, p. 52.

⁸⁰⁰ Her body is covered in scars: she has been attacked at least five times since moving to Cape Town. She is now applying to the United Nations High Commission on Refugees for resettlement to a third country, a torturous process which can take several years.

Gevisser, M. (2013). Love in exile. *The Guardian*. Retrieved November 6, 2015, from <http://www.theguardian.com/news/2014/nov/27/-sp-transgender-relationship-jail-exile-tiwonge-chimbalanga>

The Second Loss: Security or Protection

The generally violent ejecting from, and loss of support from, community in a foreign country for participants necessitates turning to NGOs for assistance. As pointed out by both Sasha and Daniel, on arriving in South Africa the visibility of a viable transgender community in South Africa is slim to non-existent. For Arendt, once experiencing this first loss of community, life simply becomes something that is prolonged through charity,⁸⁰¹ making the second loss – that of security – a near inevitability. There is one dedicated LGBT shelter in South Africa – The Pride Shelter – situated in Cape Town, which provides residence for one month. Akraam, Kelly and Alex, who had all already been sleeping on the street for a month prior, spent time in the Pride Shelter. Shelters in general, however, are often sponsored by religious institutions and do not cater for foreigners or LGBT people or both. Certainly, the difficulties of accessing shelter are common to LGBT refugees and asylum seekers in South Africa, but for gender refugees, shelters often function as particularly problematic sites of ‘common sense’ gender reinforcement. Most shelters – much like the Home Affairs queue noted in chapter 4 – are divided into male-specific or female-specific facilities, and placement happens according to an assumed birth-assigned gender.⁸⁰²

Stella distinctly remembers how cold and wet it was when she finally arrived in Cape Town from Johannesburg. Knowing no-one, and certain of community rejection, she immediately sought shelter. The first shelter she approached wanted R10/day rent. The second said it was full and the third stated that they only took in South Africans, not foreigners. During this time, she slept mostly on the streets. As Kelly points out, rough sleeping is only a possibility for so long before other rough sleepers, usually from one’s country of origin, find out about sex/gender transgressions. The Scalabrini Centre,⁸⁰³ a refugee organisation, eventually assisted Stella in finding placement at a shelter – a Christian shelter, predominantly for substance abusers. The shelter requires newcomers to remain within its walls for three months (ostensibly this is done to try and assist people with breaking cycles of addiction), after which time they can seek employment. Stella explains that on arrival, although she lives and identifies as a woman this was disregarded; she was

⁸⁰¹ Arendt, H. (1962). *The Origins of Totalitarianism*. New York: Meridian Books, p. 296.

⁸⁰² There are currently no policies addressing the placement of transgender people within the shelter system in South Africa, although there are several reports addressing this issue. See: PASSOP and The Leitner Center for International Law and Justice. (2013). *Economic Injustice: Employment and Housing Discrimination Against LGBTI Refugees and Asylum Seekers in South Africa*. Open Society Foundation. In Gender Dynamix (GDX). (2013). “We Fight More Than We Sleep”: Shelter Access by Transgender Individuals in Cape Town, South Africa. Retrieved from <http://genderdynamix.org.za/wp-content/uploads/2013/08/GDX-Shelter-Report.pdf>

⁸⁰³ Established in 1994, the centre takes its name from Bishop of Piacenza, John Baptist Scalabrini, who founded the order in 1887 to care for the welfare of migrants. See: Scalabrini Centre. (n.d.). *Scalabrini Centre*. Retrieved December 1, 2015, from <http://www.scalabrini.org.za/>

sent to the male section of the shelter, where she would remain for three months – the only woman in the men’s section:

Being trans I was scared in the shelter ... it was painful ... but I didn’t have a choice so I said ‘yes’ ... When I go to sleep I cry, ‘why am I here?’⁸⁰⁴

Finding a job proved to be an insurmountable hurdle.⁸⁰⁵ Employment is a struggle for a number of South Africans, but more so for asylum seekers due to the volatile nature of their papers.⁸⁰⁶ As Arthur, a trans man living in ‘stealth’,⁸⁰⁷ explains:

Jobs are something else here because the first thing you get to be asked is what language do you speak? And where is your permit? And how long is your permit? So those are some of the obstacles that you meet.⁸⁰⁸

Being visibly read as transgender often compounds the difficulties with regards to accessing gainful employment. Accessing legal employment is a particular hurdle for black

⁸⁰⁴ Stella

⁸⁰⁵ According to Koko Guillain, former Project Coordinator of the LGBTI Refugees Advocacy and Support Project, at People Against Suffering Oppression and Poverty (PASSOP): “As ... asylum seekers it is still a little bit difficult for them to get jobs because they may go to the place ... where there is a vacancy of employment and some of the requirements of employment is the contract is for one year at least. So when someone is a temporary permit for two months or three months as is the case for most of them, cause asylum seeker is temporary permit it is not a refugee status, they are not qualified for jobs. So they are still unemployed. When they are unemployed they can’t afford rent. So most of them they just stay at the place where it is not safe and they are assaulted and attacked” Camminga, B. (2012, September 28). Interview with Guillain, K. People Against Suffering Oppression and Poverty (PASSOP). Cape Town.

⁸⁰⁶ “Many potential employers are apprehensive regarding employing asylum seekers because they view their stay in the country as volatile. There are still many factors that constrain the ability of non-citizens to work productively in South Africa. The most significant institutional factor limiting migrant employment is delays in the processing of documentation by the DHA, which affects everyone from skilled foreign employees to asylum seekers and refugees. Furthermore, the documents issued to asylum seekers and refugees often hinder their ability to secure employment, even as they are intended to grant the right to work. This is because of the short time frames for which the documents are issued before they must be renewed (1–3 months for asylum seekers), limited public information for employers on the renewability of these permits and the timeline that applies if an application for asylum is eventually rejected, and because of the format, which is not recognised by many employers” Source: Consortium for Refugees and Migrants in South Africa. (2008). *Protecting Refugees, Asylum Seekers and Immigrants in South Africa*. Johannesburg. For LGBT-specific experiences see PASSOP and The Leitner Centre for International Law and Justice. (2013). *Economic Injustice: Employment and Housing Discrimination Against LGBTI Refugees and Asylum Seekers in South Africa*. Open Society Foundation. Retrieved from

http://www.leitnercenter.org/files/2013_Leitner_SouthAfricaLGBReport.pdf

⁸⁰⁷ Living in stealth refers to a transgender person who may not be known as transgender.

⁸⁰⁸ Arthur

trans women,⁸⁰⁹ many of whom end up doing work that is considered criminal in South Africa – survival sex work. Several participants, all of whom are female or feminine-identified, are sex workers, but being involved in sex work can also hinder access to shelters – particularly religious shelters – should the shelter find out. Stella initially tried to find work as a cleaner with ‘Jesus Saves Clean’ but she left due to discrimination about her right to use the public toilets which she was considered good enough to clean but not good enough to use:

I try to look the job ... people look at me they say ‘are you a man? You can’t come to work inside’ ... I was a cleaner [but] ... they start discrimination. When I went to the toilet the boss said: ‘are you a woman? Or are you a man? You look like woman’. The boss said I can’t go to the women’s toilet because I said I am a woman but she says I am a man ... I am forced to go to the man’s toilet ... because she doesn’t understand ... I fight ... I say ‘it’s a public toilet ... there’s no different between you and me ... the sex makes no difference ... you sit and I sit. When you finish you flush and me I flush.’⁸¹⁰

Unable to find a job and income after being in South Africa for two years, which she ascribes to how she dresses – as a woman – being discontinuous with her documents which state ‘male’, Stella turned to sex work. On one occasion, one of the shelter residents saw her with a client and reported this to the pastor, the head of the shelter, who asked her to leave. In the face of clear growing reinstatement of borderland existence, having exhausted all options for support, denied ‘residence’, gender refugees strike out on their own and make do with whatever means possible. The initial decision seems to be between living near the city centre or further out in an informal settlement. Living closer to a city centre often requires valid paperwork for rental purposes, sometimes a greater deposit, and sometimes surety signed by a third party because of the perceived volatility of asylum seeker papers. Apartments and rooms are shared with other people, from either the same country or other countries, who are very rarely also gay or transgender, to ensure affordability. The overall appeal, though, is the access to policing services that are far more likely to respond – and react positively – when called upon, and not having to navigate public transport or poorly lit streets late at night. An informal settlement, on the other hand, is less expensive and requires little to no official documentation in order to find a room. Disadvantages include the distance from places of business, poor insulation in winter, lack of accessible amenities, poor police response and higher transport expenses. These are the disadvantages for everyone living outside the metropole in South Africa. Transgender asylum seekers also need to consider the exposure to others living in close quarters who may resent the presence of foreigners, especially foreigners who are perceived as gay. As Stella notes:

⁸⁰⁹ See: Spade, D. (2011). *Normal Life: Administrative Violence, Critical Trans Politics and the Limits of the Law*. Brooklyn, NY: South End Press.

⁸¹⁰ Stella

It is a difficulty ... to stay in location (township) when you are transgender. It is very hard to because you get the discrimination ... people doesn't understand.⁸¹¹

Eventually, Stella was able to find herself a room in Delft, an informal location about half an hour outside of Cape Town. She traded safety and visibility in order to live alone, in a makeshift room attached to a larger house. After finding a place to live, participants often have to contend with landlords who find out about their gender identity and/or sexuality. Alex has had several bad run-ins with landlords, including being beaten for having 'gay' visitors.⁸¹² Stella makes sure that she comes home late and leaves early to avoid being seen by anyone. She has never been entirely comfortable staying in the location but, as a sex worker, lacking steady income, she cannot afford to stay elsewhere. Referencing Arendt's second loss, she states:

I can't say in my life I have got security because anytime they can kill me because you transgender. The travel for me, how I survive, I am still in the location but I don't stay in the location most of the time ... It is very difficult ... you don't have toilet, you don't have bathroom ... The papers make it difficult to get a job ... It's difficult to survive, it is very difficult for me to survive ... I'd like to stay in town but it's very expensive it's why I live in the location but in the location I am not safe⁸¹³.

Living in suburban areas, however, presents its own difficulties, even if one is able to purchase some kind of security. During Ava's transition, after having moved out of her cousin's home, she moved into shared housing aimed at foreign students. She was mercilessly teased and outed publicly by those with whom she was living, who would often say: "He is trying to be a she". Fearing for her life, she eventually moved out with the assistance of a sponsor from her church, who provided surety for a new apartment. She was able to find slightly better accommodation, sharing with fewer people. Although she set out to live with South Africans she ended up moving in with a Ugandan couple, to whom she explained her situation, because she had to show them her ID which states she is male. The block into Ava moved was part of an enclosed compound requiring fingerprinting to enter. Within the compound live people from several African nations, so although Ava had explained her situation to her new flatmates, she still had to deal with others living in close confines.

There were Nigerians ... One day when I was coming from Church late at night in skirt one was in his car saying, "I will drive you over with my car ... come and stand here. I am going to kill you". Maybe he can do it and say "accident"⁸¹⁴

⁸¹¹ Stella

⁸¹² The beating of gay or transgender tenants is seemingly not uncommon. See: Washinyira, T. (2013, June 13). *Family Beats Up Their Gay Tenant*. Retrieved June 9, 2015, from http://groundup.org.za/article/family-beats-their-gay-tenant_1016

⁸¹³ Stella

⁸¹⁴ Ava

Arendt's second loss, illustrated here, is that of protection or security, in part due to the loss, or the precarious nature, of legal status – the disruptiveness to the 'common sense'. As Parekh notes: for Arendt, "these deprivations – of a place in the world, of a *recognisable identity* – are more fundamental than the loss of the rights to citizenship".⁸¹⁵ For gender refugees in South Africa, this is indeed the outcome of the compounded experience of asylum, gender as a category of classification within the RRO, common sense readings of sex/gender as a wider administrative classification, and the erosion of all vestiges of community.⁸¹⁶

The System: "Consuming Them"⁸¹⁷

As has been noted, gender refugees in South Africa, once having left the RRO, are faced with a host of societal issues that can be linked directly to the wider 'common sense' notion of sex/gender within society. It is clear that although rights exist, there are specific impediments to accessing and actualising these. The requirement that asylum seekers return regularly to the RRO at which they applied in order to renew their permit, is one of the biggest impediments to building a life in South Africa for all asylum seekers, more so for those without community or support networks. For participants, what is most surprising is not their continued borderland existence, or the repeat patterns of shifting in order to survive, but the way in which the asylum system seems to leave those with claims of individual persecution in constant limbo – "a time out of time"⁸¹⁸ – repeating an endless pattern of waiting and renewals. As has been evidenced, this hinders survival, including the ability to find stable employment and housing. As Alex explains:

I am just stuck and my paper is not really able ... [to do anything], you know ... even if you just have an asylum permit people are saying no you are illegal.⁸¹⁹

Daniel, who has been an asylum seeker for nearly five years, explains that this waiting and endless repetition means that they are not "real". Returning to arguments made in chapter three regarding Foucault and biopower, gender refugees, for the most part, have not been brought into the space of those sanctioned for life, as they had hoped they would be. Although life beyond South Africa's boundaries, for them, was dominated by the necropolitical, far from abandoning this at the border, there is no absence in South Africa of the promise or threat of death. In a system much like a production line, although asylum seekers have rights, this is seemingly contradicted by the way in which they are treated: the

⁸¹⁵ Parekh, S. (2008). *Hannah Arendt and the Challenge of Modernity: A Phenomenology of Human Rights*. New York: Routledge, p. 28.

⁸¹⁶ Arendt, H. (1962). *The Origins of Totalitarianism*. New York: Meridian Books, p. 294.

⁸¹⁷ Stella

⁸¹⁸ Bowker, G. C., & Star, S. L. (2000). *Sorting Things Out*. Cambridge: MIT Press, p. 209.

⁸¹⁹ Alex

inability to ask questions and the seeming impossibility of being acknowledged/seen in relation to identity. For Kelly, every time she returns to Home Affairs they renew her permit for three months. She has already been in the country for four years: by rights, in her fifth year, she should be able to claim permanent residency, but she needs to be recognised as a refugee first.

You have to behave because anytime you go back they can tell you ... we have given you thirty days to go back to your country ... they don't like you to ask questions ... You just sit there, they take your fingerprints and when your paper comes out you move, you go, another one comes.⁸²⁰

For Ava there is a sense – here again referencing Arendt – that rather than gaining humanity and an acknowledgement of personhood, quite the opposite has happened.

You can't even comment ... she [the official] took the paper and I could see that it was not me it was this other person so I said that's not my paper. 'Did I ask you anything?' [angry voice]. So I shut up and kept quiet ... Like an animal, they don't treat you like someone deserving ... You come there, you sit, keep quiet and do what they want you to do.⁸²¹

The asylum paper, *the paper*, is spoken about with reverence: paradoxically, for some participants, these papers do not actually reflect either their correct names or genders, or in some cases, even photos. At least two participants, Stella and Ava, carry subsidiary documents provided by state medical practitioners, subsidised by the South African State to mediate these inconsistencies. As Paisley Currah notes, "For transgender people, the immense number of state actors defining sex [and gender] ensnares them in a Kafkaesque web of official identity contradiction and chaos".⁸²² Not to return for renewal, to allow documents to lapse, to miss a renewal deadline or to access documents in ways that the state would consider illegal is – to varying degrees – to go undocumented, exiting the official asylum system and becoming "an illegal". What sense of the word does this hold, though, when the option to be documented can be as precarious as to be undocumented? As Ava explains regarding her inconsistencies, this is not exceptional but rather part and parcel of the functioning of a system that can only see dichotomy:

It's not a life. I am actually living like someone who is illegal in a country where I am using legal papers because everywhere you go they will tell you 'no this is not you'.⁸²³

Ava in particular has become more and more frustrated with the system's inability to acknowledge; although her case is specifically about her gender, she is not alone in finding the lack of general acknowledgement of her claim to refugee status and the constant renewals of her asylum papers exhausting. Eithne Luibheid notes in passing in the closing chapter of *Entry Denied*, that fraud and the subversion made possible through forged documents may be dismissed as lawless by the state but can also be usefully read "as a

⁸²⁰ Kelly

⁸²¹ Ava

⁸²² Currah, P., & Mulqueen, T. (2011). Securitizing Gender: Identity, Biometrics, and Transgender Bodies at the Airport. *Social Research*, 78(2), p. 561.

⁸²³ Ava

competing system of knowledge that is brought against the State”.⁸²⁴ Ava believes the reason that her asylum claim is constantly renewed – which she sees as akin to denial – is because: “*they think you consuming the country, you consuming them so it will be no*”.⁸²⁵ Tey Meadow notes that should legal constructs of gender be unable to keep pace with, or account for, the current manifestations of genders (which she calls contemporary demands for fluidity), “It will become even more difficult to quantify and achieve legal gender recognition”.⁸²⁶ The experiences of participants differ in degrees but there are common strands in Ava’s explanation:

It’s like life stops because that is the only thing you use for identification. This is the thing that you use to the banks, this is the thing you use for employment for jobs, this is the thing that you going to use at school and this is the thing that everybody, everywhere you go, everybody looks at and looks at you again and questions. You do not have to go, if you don’t look like that you are cheating this is not your paper. This is not your paper and what are you going to do? What if you go to apply for a job and they bring you in and you put female [on the form] and you go to an interview. They going to bring that stuff that says male and they don’t see a male in front of them ... What are you going to do?⁸²⁷

The constant inability to function on a day-to-day basis has driven her to a point of corruption. Note here that it is a combination of the repetitive nature of her life as an asylum seeker, in combination with incongruent documents as a transgender person, and the almost everydayness of this experience:

I am tired of every time having to explain, I am tired of having to go all the time. So I have two paper: I am having a fake that says it is me, female and I have a legal one [which says male]... I paid R250 I use the same names. My names are not complicated for me and the new picture of me and the gender female not male ... I just have to walk with it or to apply for jobs maybe. If now I am applying my CV is female, if they ask me my ID then I will bring them that paper so I don’t have to show them the real one because if I show them the real one telling the whole fucking story I don’t want that.⁸²⁸

This regime of documents is used to prove that one is who one claims to be, particularly when seeking a service from the State or applying for a job. A document, in this case an asylum seeker paper provided by the DHA sets the groundwork for other necessary documents, or works as what is known as a ‘seed document’.⁸²⁹ When a false seed document is attained, as Ava has already done, it can be used to attain other identity documents “that in accumulation, are supposed to present reliable evidence of a person’s identity”.⁸³⁰ She explains that this is only a makeshift plan to address her immediate need to

⁸²⁴ Luibheid, E. (2002). *Entry Denied: Controlling Sexuality at the Border*. Minneapolis: University of Minnesota Press, p. 144.

⁸²⁵ Ava

⁸²⁶ Meadow, T. (2010). “A Rose is A Rose”: On Producing Legal Gender Classification. *Gender and Society*, 24(6), p. 832.

⁸²⁷ Ava

⁸²⁸ Ava

⁸²⁹ van der Ploeg, I. (1999). Written on the Body: Biometrics and Identity. *Computers and Society*, 29(1).

⁸³⁰ Ibid., p. 38.

navigate day-to-day life with a relative sense of safety and to access employment. Her real project is far more cunning: Ava plans to apply for a new passport at the consulate of a Country that borders her Country of origin:

To get passport from [Country B] ... embassy here is easy ... I want to got to Pretoria and apply for passport and then get my female passport which is going to be easy because I have already got a connection in the embassy – the woman who interviews people ... when you a refugee and you want to leave refugee system because you want to apply for the passport they only ask you, what paper you use. You show them you used their paper they will read it and then they will ask you if you left the country before the elections. So I tell them I left the country before the elections. I tell them I speak the languages ... so I go passed interview, of course I don't want to be a ... [Country of Origin] identity anyway ... I am not a corrupted person but I've done corruption ... to get my way ... you have to do what you have to do to get your life.⁸³¹

Ava's words "get your life" are poignant. Life here for Ava is moving into binary and being seen as the woman she is – being in control of her visibility. This is predicated, however, on exiting asylum. It would seem that being able to pass and move into a binary position would resolve the need for community support. Ultimately, for those in constant visibility, rights and the claiming of rights – whether that be to protection or to State-sanctioned paperwork – ensure visibility. The logical conclusion of exiting or falling out of the system is statelessness and compounded erasure, unless – like Ava – there is a way in which to reclaim community, reclaim humanness through binary presentation, and manoeuvre through the system.

Resistance to the System

Although all participants could apply for asylum, and the majority did, some chose very specifically not to. This was largely in a bid to avoid the precarious nature of being an asylum seeker, coupled with the rigid administration of sex/gender by the State, which seemingly only exacerbates issues of day-to-day 'common sense' administration. Star and Bowker read Gloria Anzaldúa, in relation to the power of classification and borderlands, as "a cauldron for a creative approach to surviving".⁸³² They are quick to note, though, that in saying this there is a need to be wary of romanticising or glorifying borderland existence, stressing that this is a site of "physical and political suffering".⁸³³ Aside from officials working for the State there is arguably another kind of expert involved in navigating the governance systems of States in order to maintain ties, ensure mobility and "get life".⁸³⁴ As highlighted, in the majority of participants' cases, family connections and community ties within South Africa proved as problematic as those in their country of origin. For some though, family members assisted in ensuring their safety, facilitating and enabling their coming to South Africa. This

⁸³¹ Ava

⁸³² Bowker, G. C., & Star, S. L. (2000). *Sorting Things Out*. Cambridge: MIT Press, p. 305.

⁸³³ Ibid.

⁸³⁴ Tricia

was particularly true for five participants who all came to South Africa from a country which shares a border with South Africa between 2005 and 2012, largely at the behest of their families. Unlike other participants – who each arrived individually knowing relatively no-one, being forced to navigate both in-country communities, extended family networks, sleeping on the streets and the shelter system – this group followed other ‘transgenders’ and arrived to each other, in essence creating their own community. I argue that it is due to this, and to their continued ties to their families, along with their insistence on ‘being from their country of origin’ that their relations with the refugee system and their perception of their own rights are starkly different from those who lack all sense of community.

When Tricia arrived in Johannesburg in 2005, she came with the belief, much like all participants, that South Africa was the place to be ‘free’, meaning she would be able to dress and wear make-up as desired. Prior to leaving her small rural community, her distress had escalated to a point at which she could no longer manage both the isolation and the threats to her life.

It was my intention [to come to South Africa and be a woman] as well. Since I saw these other friends of mine ... They used to be men when they came you know with breasts and I wanted to be like that also ... In South Africa, when I came here and I was under them and they were sex workers, they were ‘sex changers’ ... they were ‘transgenders’ ... so from there I followed their footsteps.⁸³⁵

Tricia is now the person to whom others like her come. She is considered something of an elder to others in similar circumstances. Those who do come to Tricia know that, much like the majority of gender refugees who identify as women, she is a sex worker and that she will lend them clothes and heels and explain how to “get business”. Bobbie came to South Africa shortly after Tricia in 2007. Her main reason for coming was that in her home country she felt that she did not have the right “to expose herself”, in essence to live/dress as a woman. Both Chifundo and Maxine arrived in 2010. For Maxine, much like Bobbie, South Africa represents the possibility of finally being able to wear dresses; Chifundo heard from friends that life in South Africa would be better:

When you grow up and you find out that you are gay, you know, in my country you get arrested for that. I just came to South Africa because my friend was here told me, “You know what, here you can live like peacefully”.⁸³⁶

Nelly was the last to arrive, in 2012, after being chased by a mob and pelted with mud. Both Bobbie and Maxine knew about Tricia and other ‘transgenders’ like her living in South Africa. After Bobbie had crossed the border, it was Tricia whom she eventually called to pay the *Malaishas* for the taxi to Johannesburg. Tricia would eventually teach both of them, and later Nelly and Chifundo, about sex work. Ostensibly the group have formed their own

⁸³⁵ Tricia

⁸³⁶ Chifundo

community and support each other, often going to work together and lending each other clothes.

What sets Tricia, Maxine, Bobbie, Chifundo and Nelly apart from other participants is that they believe they do not need documentation to be in South Africa. They understand the country as a place that protects 'gay people'. With this notion in place, their understanding is that they will never be deported because they are both *gay/transgender* and a *particular national identity*. Regardless of how legally spurious this idea is, to their minds South Africa signifies a place in which they can live safely as both transgender and lay claim to their national identity. This idea that they are from a particular country of origin and have a national identity is, I believe, central. Rather than entering an asylum system which crucially requires a repudiation of one's country of origin, this group travels back and forth maintaining family and in some cases home community ties. Familial ties are in many ways the kernel of this group's survival. Bobbie once had a client who broke her knee and left her in a ditch: it was her family to whom she went home afterwards to be looked after.

You know it's not easy ... If you are not making money, you are not feeling well, you want to eat, you want to drink your tablets, so it's better to go home. Home is the best ... [Staying] you end up hurting your friends ... So it's another stress. I just decided to go home. I just phoned my mother and she send me the money ... I went home for nine months.⁸³⁷

This belief that they will not be deported because of the combination of their sex/gender and their nationality, is concomitant with an understanding that they are also able to turn to South African law enforcement for assistance when experiencing negative attention from any member of the general public. This is regardless of the fact that they have all been chased, arrested and forced to pay bribes to the police. For Tricia, what the law says and what the law does are two entirely different matters:

The law says that you have to have the work permit but here in South Africa if you are gay you have no problems of all these things. Even if you don't have a passport ... They don't need an ID ... they just understand that you are gay, especially if you are from...[country of origin].⁸³⁸

One story illustrates the extent and impact of the belief about being "especially" from this country of origin. Those with passports – Tricia, Chifundo and Nelly – having crossed into South Africa, pay taxi drivers to take their passports back across the border and have them stamped out along with the other passengers. These are then returned to them in South Africa, essentially ensuring that their visa does not expire by stating that they are in their country of origin while actually in South Africa. This is called 'fixing a passport', as Nelly explains:

⁸³⁷ Bobbie

⁸³⁸ Tricia

I have a passport but it's so unfortunate that my passport has overstayed ... I want to try to get it fixed.⁸³⁹

Crucially here, it is not the individual who has overstayed, it is the paper work – a bureaucratic inconvenience. Two things happen in this instance of creative manoeuvring. Returning to the precariousness of documents for transgender people: combining a photograph with other identifying data, such as sex/gender, is meant to identify their carrier uniquely and unambiguously. To have a document often means to be in danger – the image reflected on that document versus the perception of the bureaucracy becomes of critical importance. Not to have this document – to send it back with a taxi full of passengers so that it can be stamped out of the country – means that the body that is meant to be attached to such a document never has to be ascertained. The incongruence between how these five participants present in South Africa and the 'M' – male marker – on their passports is actively distanced through this method. This distancing suggests why, for Nelly, it is the passport that has overstayed, not the actual physical person. The second thing that takes place here is that the document now states the holder is in their country of origin regardless of the fact that they are actually in South Africa.

On one occasion, Tricia was arrested, detained and sent to Lindela, a deportation facility on the outskirts of Johannesburg because her passport, which she had with her, stated that she was in fact currently in her country of origin. She was detained for three days, held separately from the general population. To Tricia's mind, though, the South African government has "no right to take us back. I mean especially if I'm in drag".⁸⁴⁰ Critically, Tricia adds that she did have to play into the notion that if she was sent back her life would clearly be in danger and she would lack all support – in essence, the story that is often required within asylum regimes – one of repudiation or a framing of one's country of origin and family as persecutors and oppressors. As she explains:

They feel pity, about what I am ... "What is my family gonna say about this?" ... You can't tell them, "My family understands what I am". You just have to tell them, "My family doesn't understand what I am"⁸⁴¹.

Returning to Arendt's formulations regarding rights actualisation, community and the danger of being nothing but human, the particular group's claims to their country of origin, and the times they "insisted on ... nationality", function as a "recognised tie with humanity"⁸⁴² or membership to the "common world"⁸⁴³ – something other participants do not have. Notably, Tricia did not inform the officials of her perceptions around what being

⁸³⁹ Nelly

⁸⁴⁰ Tricia

⁸⁴¹ Tricia

⁸⁴² Arendt, H. (2000). *The Perplexities of the Rights of Man*. In P. Baehr (Ed.), *The Portable Hannah Arendt*. New York: Penguin Books, p. 41.

⁸⁴³ *Ibid.*, p. 43.

read as gay and from her particular country of origin might mean in relation to deportation but feigned deference awaiting what she perceived to be the forgone conclusion – that they would not deport her. The officials at Lindela felt such pity for Tricia, that not only did they release her but they gave her asylum seeker papers renewable in six months, which she had not applied for. Tricia never had the papers renewed and returned to using her passport, the very avenue that had sent her to Lindela in the first place. Tricia’s story may seem dubious given the number of instances of questionable legality, but Nelly, too, has been sent to Lindela for deportation.

One of them said no this one is not a lady ... So they say, “No, please go! Go! We can’t deport you because you are gay”.⁸⁴⁴

This group creatively manage state systems of bureaucracy, although they do maintain a borderland existence. Unlike other participants, they maintain clear ties to their families and their country of origin, identifying as being of a particular nationality and being from their country of origin, while creating a self-supportive community in South Africa. Notably they are by no means actively seeking rights within the South African state, or a sanctioning of life. As with Tricia not renewing her asylum papers, they live outside of the need for State-sanctioned security and personhood. They have ostensibly not experienced any of the losses defined by Arendt as linked to those who lose all sense of community; this may explain their belief in – and apparent ability to access – rights and protections within South Africa.

Trans men: Not The System

Arthur and Tom both entered South Africa using work/student visas. Unlike those who have applied for asylum and who feel stuck in limbo, or Tricia’s group who want to move between the two countries, Arthur and Tom have no intention of returning to their countries of origin. Arthur, having accessed both gender-affirming surgery and hormone therapy prior to arriving in South Africa, lives, identifies and – vitally for him – passes, as a man. Through some deft handling of his country’s administrative system, he was also able to have his passport changed to male – a near-impossible feat – thanks to a series of ‘friends’ he had who worked in various areas of his country of origin’s administration. Tom, on the other hand, has just started transitioning in South Africa.

Arthur came to South Africa because he knew that it was the only country where transgender people within Africa could access gender-affirming healthcare with a certain level of ease. After his transition, he did not want to return to his home country or community. Unlike other participants who came to South Africa actively to pursue rights

⁸⁴⁴ Nelly

and freedoms, Arthur came to live “like a normal guy under the radar”.⁸⁴⁵ Critically, he does not identify as transgender; rather he is just a man. This is in contrast with the other participants who *need* to identify as transgender or gay, within the asylum system – “a system that requires exposure for protection”. South Africa represents the possibility of a new life where his past is unknown.

I know for a fact if I go back to the house [where] I used to stay, the society, the village, the township that I used to stay they will know. It’s going to be hard because they know me from my childhood, they saw me grow up. Now I come back and say no this is who I am right now. It’s going to be tough and for the sake of my family ... I wanna save them the shame.⁸⁴⁶

Tom has a job and a work permit and, by extension, self-reliance; this means he very rarely has to say anything to anyone, and his survival is not predicated on his visibility. He is not looking for public benefits or for the State to provide anything, including access to gender-affirming healthcare, as he can afford private access. Tom understands himself as a man who wants to access gender-affirming health care available in South Africa, but not necessarily be anything other than “a person”. As with Arthur, personhood is central here, and is to a certain degree maintained by a combination of passing and avoiding State administrative systems.

For Tom, it is his job, and perhaps his ability to pass most of the time as a man; for Arthur it is the combination of his paperwork and his ability to pass all the time. This allows them both the kind of life that is liveable – where they do not rely on State systems for protection or access to rights. What is clear here is that “transgender bodies that conform to a dominant standard of dress and behaviour may be legible to the state not as transgender at all, but instead as properly gendered and ‘safe.’ But not all gendered bodies are so easily normalised”.⁸⁴⁷ Arthur is not oblivious to the privileges that his documents, masculinity and ‘common sense’ passing have provided him. He is adamant that the lives of trans men are far easier and happier than those of trans women.

I feel so sad for trans women because not only here but wherever they are it is known that these are men. It’s never been easy ... I have friends in such situations as well. That’s hard, for them it’s very hard. You can just identify them by looking at them. That’s where the problem starts.⁸⁴⁸

For Arthur, there is a clear tension between access, passing, visibility and rights. He suggests that those at the lowest rungs of society are most desperate for rights: being both the most visible and the most in need traps them in a continuous cycle of visibility. There is no shifting here for either of them; rather, they are extant. As he states: “my life is just

⁸⁴⁵ Arthur

⁸⁴⁶ Arthur

⁸⁴⁷ Beauchamp, T. (2009). Artful Concealment and Strategic Visibility: Transgender Bodies and U.S. State Surveillance After 9/11. *Surveillance Society*, 6(4), p. 359-360.

⁸⁴⁸ Arthur

smooth”.⁸⁴⁹ In explaining issues, “the problem” around visibility and access: Arthur believes that as long he avoids interactions with the State, his life is actually better than even South African transgender men. To his mind, he has been able to come to a country with access to the necessities for his existence and start a new life, unknown. However, he believes that South African trans men have similar access and opportunities but they cannot go anywhere, they will always be known. They cannot escape their families, their communities, their relatives and their childhood:

I’ve met some of the South African trans men ... they are also going through the same challenges by means of family issues and relatives and friends ... this is their home country and people know them from their childhood and when it comes to job it’s also difficult for them because of their names, their IDs and certificates ... meeting those kinds of friends you feel ... lucky God has given me a favour ... So I’m very happy with my life⁸⁵⁰.

Even his choice to become a participant, was for him, in his complete control in that, in order to be a participant – as he pointed out – he had to make himself visible to me. Moreover, what he also points out here is that in passing and being read as a man by society, his community is other men:

You meet me on the road I’m just like any guy. I don’t go chasing for rights and stuff like that because you know ... It’s a little bit selfish but it just makes me accepted. It makes me feel accepted and I like it ... For me personally I don’t like to put myself in a private corner where I see that I am different from other guys. I like to associate myself with other male friends. Whatever they do I do, so I feel part and parcel of them.⁸⁵¹

He has been able to provide the basic necessities for himself because his documents align with how he presents and he is considered normative in the eyes of society. For Arthur, fitting into the binary and passing is key to maintaining rights and being read as human because he is read as a man in a community of men.

I thought a lot of trans men are very happy ... if I want a job I just go and look for one. For me, they are not going to go into my pants to see what’s there. You just have to check my certificates and interview me.⁸⁵²

Arthur and Tom do not need to “chase rights” because they have personhood, they have national identities, permits allowing them work, socioeconomic safety, community and, most importantly, genders readable in a system that relies on ‘common sense’ assumptions. As Arthur reiterates: “I don’t care much about the rights whatsoever because I’m not going to claim them anyway”.

⁸⁴⁹ Arthur

⁸⁵⁰ Arthur

⁸⁵¹ Arthur

⁸⁵² Arthur

Conclusion

Gender refugees, in coming to South Africa and applying for asylum, enter a kind of limbo, they cannot go but they also struggle to stay. They are allowed in but evidently nothing more. They cross the border, and have every right to do so, but that does not mean that the State in any way has to allow them a notion of home or recognisable life. South Africa enshrines a universal approach to human rights that by extension should hold transgender. In fact, in many ways, it is this holding that gender refugees hope transgender will do for them in the country. Yet, beyond the doors of the RRO, the notions, perceptions and imaginings of gender refugees – those ideas of ‘freedom, freedom, freedom’ – meet the actuality of a space that is structured very much like the countries most asylum seekers have just fled.⁸⁵³

In relation to asylum there are clearly two strategies being deployed by gender refugees in South Africa. The first group, though they can claim asylum, have specifically chosen not to. They either creatively evade State systems entirely, remaining in the borderlands, in order to maintain and create specific communal and familial ties; or they actively choose not to enter the system because they pass, and by passing, in this case as men in society, they have already entered the zone of the living, eschewing the borderlands almost entirely. In the latter case, transgender is a means to accessing health care and something to be hidden. In the former, transgender is a key element of a personal ontology which suggests that they have every right to be in South Africa and will not be deported. This group believe that being trans – in the ways that they inhabit the category – means that they do not need to seek State safety or rights, and in fact, acknowledge that to do so actively would only ensure danger, rather than protect them from danger.

The second group is populated mostly by asylum-seekers who, as transgender-identified, feel they are women or on a spectrum of femininity: their documents, however, read as assigned male. They apply for asylum in the clear hope (predicated on rights enshrined in the Constitution) that there will be recognition by the State of their transgender status, enabling access to safety, protection, personhood, membership within a community of others, and a place in the zone of the living, or a liveable life. This group – as has been argued – find the requirements, either of being acknowledged directly or of maintaining their presence within the asylum system, almost impossible. The inability to be seen by the State in relation to their gender identity and their official documents is only one hurdle of many that ensure that this group, too, remains in the borderlands. In cases where socioeconomic security is available – either through sponsorship or actual employment – falling out of the system is seemingly slightly less brutal, but eventually, every participant

⁸⁵³ Arthur

who has turned to the State for assistance has had to trade in some sort of illegality in order to survive.

As has been shown by the focus on the hindrances to local integration in relation to community and familial issues, the nature of asylum in South Africa is turbulent at best, making survival for the average asylum seeker difficult. Being transgender often obstructs access to traditional asylum support networks, employment, and shelter, requiring NGOs to fill the gap. NGOs, for their part, are not equipped to deal with the very specific needs of individuals who are both asylum seekers and transgender. The combination of these pressures ensures that transgender asylum seekers eventually find themselves either falling out of the asylum system altogether, or becoming pinned within an endless cycle of asylum paper-renewal. In essence they are never able to leave the borderlands; they are seemingly stuck in a state of constant shifting. However, they are not the only items stuck here. Transgender becomes – or is – stuck too: in coming to South Africa, transgender people believe they will access humanity and be protected, but because they violate the rules of normative gender which still apply here, they find themselves with rights but without community or home, and so unable to fully actualise these rights.

Conclusion: “The journey does not end. It’s a life time journey”⁸⁵⁴

This thesis has explored the experiences of gender refugees – *people who can make claims to refugee status, fleeing their countries of origin based on the persecution of their gender identity*. Alex, Akraam, Sasha, Stella, Kelly, Victor, Tiwonge, Arthur, Eshe, Ava, Tom, Tatenda, Maxine, Tricia, Siya, Nelly, Bobbie, Daniel, Udogu, and Chifundo all left various countries from disparate parts of Africa in an effort to make a very specific journey to South Africa. Connected to the journeys of these participants – those this thesis has defined as ‘knowing subjects’ – has been the journey of ‘transgender’, a term/concept initially emergent in the Global North. As noted, in all of the countries of origin left by participants, same sex sexuality is considered illegal – with one exception, although legislation has been suggested to this end. Those who present in ways considered gender non-conforming or disruptive to the social order are, as this thesis has argued, read as the epitome of homosexuality, and experience varying levels of visibility and persecution in direct relation to this. It must be noted, however, that not all those who present in ways considered disruptive to normative perceptions of gender, or those accused of homosexuality, flee their countries of origin. The participants in this thesis experienced a confluence of overlapping factors which eventually lead to their journey to South Africa. These include, but are not limited to: varying levels of familial exclusion, social pressure, public denigration, and eventually, actual physical threat to their lives. It is this moment of physical danger that has often been the catalyst to fleeing. It must be reiterated here that the stories throughout this thesis are not blanket stories of constant persecution, but rather nuanced experiences of acceptance coupled with experiences of complete isolation, rejection and insecurity.

Alongside this, all participants within this thesis have a particular understanding of and relationship to the term transgender. Throughout this text, transgender has on many levels been predicated on movement – it is a term which journeys conceptually with particular ideas, implied meaning, suggested politics and possible narratives. It presents as flashes across time marked by the doings of gender that depart from the normative – it is transgressive. Yet, it can also be normative. Transgender, like gender refugees, has departures and arrivals. It crosses and is carried and it carries and is crossed. Transgender is also constrained and contested. It can ignite imaginaries, present as possibilities, or burden reality – presenting as impossibilities. It is like the borders of nations, in that it is a paradoxical entity: porous yet concrete. The term is slippery, perhaps purposefully evasive, but it has perhaps a singular certainty – it is about gender. Yet, in this context it is also about sexuality and sex. Definable and identifiable but also indefinable, open and amendable, it has a currency in the present but also a certain futurity in that it is constructed in tension with the bodies, homes and borders with which it comes into contact. Yet, these are also

⁸⁵⁴ Arthur

fundamental elements of it. In following its evolution, this thesis has attempted to track transgender emergence in South Africa, establishing the places it has landed, where it has interacted and mixed and what it has taken on board. Like other entities which flow, what has become clear is that transgender coheres in certain areas, around certain bodies, institutions and ideas.

In understanding the relationship between the movements of transgender in relation to the movement, lives and experiences of gender refugees in their journeys to South Africa, this thesis has presented three primary arguments. The first relates to the emergence of the term transgender and the circumstances peculiar to South Africa that have facilitated its materialisation in the country and movement outwards. The second addresses the constitutional-legal make up of South Africa in relation to both the emergence of the term and the radical possibilities presented by the South African constitution. This argument deals with the journey of gender refugees to South Africa, the potential meanings of transgender – what it does, what it can do and what it has been doing for a particular group of people who have a certain investment in it. The third primary argument draws on elements of both the first and second in that, whereas the first is about the emergence of the term, and the second about what might bring or draw gender refugees to South Africa, the third functions at the interstices of these, addressing the imaginary or possibility of ‘home’ envisioned by gender refugees. Indeed, the first primary argument is about transgender, the second about the possibility of gender refugees, and the third is a site where the two meet – in South Africa itself.

A Distinctive set of Transgender Phenomena

This thesis has argued that a particular set of ‘transgender phenomena’ peculiar to South Africa can be read through the country’s distinctive history in relation to its colonial heritage, the role of Apartheid, and the advent of constitutional democracy. Systems of sex and gender are opaque, obscured in their normative expectations, arrangements and structures until they become disputed or disrupted. Disturbances to these systems – perceptible in moments of transgression, management, suppression, and resistance by bodies – both bring them into visibility and trouble their foundational precepts. It is these moments that this thesis has tracked, reading them as strands that map the emergence of transgender, and its travel to and meaning in South Africa. These transgender phenomena have, within this thesis, unfolded across medico-legal literature, academic publications, popular cultural and news media, civil society organisations and sub-cultural networks.

This thesis has read the fear of transgression and the import of deviance from the colonial metropole as historical fragments of discourse that serve as part of the foundation

of the emergence of transgender. Early instances of legislative control are perceptible in pre-Union South Africa's Disguises Act and attendant Ordinances, arguably aimed at curtailing the wearing of dresses by male-bodied individuals. Medical knowledge and technology, which developed in relation to these discourses, served as a 'scientific' codification – early sites of knowledge production – that would eventually pose gender transgression as an illness. This medico-legal enfolding in the early 1900s played a unique role in distinguishing and delineating types of bodies and acceptable behaviour along several, often intersecting, lines, including race, sex, sexuality and gender. Language with oblique references to issues regarding gender, sex and/or sexuality correlating with deviance began to appear in the South African Medical Journal as early as 1909. The Journal also shows clear development of the reciprocal progress of both eugenics and sexology as academic and scientific disciplines. Along with these international developments, the emergence of public figures aligned with the term 'transsexual' began to receive considerable attention in the journal and, more widely, in the South African press. These early transgender phenomena appeared as brief titillating flashes in local news media – exposing new avenues for the dispersal of knowledge, information and visibility.

This thesis has argued that South Africa seemed to follow a similar developmental timeline to the Global North in relation to a growing refinement in medical categories, partly spurred on by the growing availability of technology and knowledge and a greater engagement with notions of 'sex change'. Yet, the social and political conditions differed considerably from the Global North, particularly with regards to homosexuality. While the term 'transgender' began to make its first appearances internationally, South Africa – due to the Nationalist Party's project of complete social control and repressive militarisation – began to experience increasing isolation and international condemnation. Increased State control meant more clearly delineated and policed categories of being. Nowhere was this more evident than in the creation of sex change, or 'transsexual', clinics at tertiary academic hospitals, and the use of sex change to cure deviate sexuality within the military. This 'new' category of transsexual was directly linked to that of the homosexual – ostensibly, as this thesis has argued, representing its corrected sexually-realigned counterpart.

The establishment of the Phoenix Society in the 1980s and their publication *FanFare* interrupted this particular circulation of heteronormatively-focused power/knowledge in relation to medico-legal control. Individuals began self-identifying outside of medical determination, establishing community and, by extension, initiating new conduits through which trans could disperse and develop – undermining the strictures of illness and State control. Their emergence, however, did not trigger a separation or delineation between gender, sex and sexuality. Indeed, Phoenix themselves, in a curious move which received some international support, suggested that while 'transgenderists' desired to live in their chosen gender, transsexuals desired a 'sex change' in order to cure their homosexuality, by

way of creating an acceptable means to engage in sexual relations with men. Transsexuality, then, for both the Apartheid State and the Phoenix Society, was a means through which to realign sexual orientation, a true crossing or transing of sexuality away from the moral threat and failure of homosexuality towards heterosexuality, rather than a means through which to medically facilitate one's desired gender embodiment.

By the 1990s, as South Africa made efforts to shift from a militarised totalitarian regime to a non-discriminatory Constitutional democracy, the knowledge/power interplay between global and local forces and internal medico-legal control in relation to transgender phenomena shifted drastically. Transgender phenomena, in particular the changing of sex, was presented as an outmoded, unjust and archaic practice undertaken by the Apartheid State. In the new South Africa, where homosexuality had become constitutionally protected, the body fell away altogether as something malleable. This happened alongside a greater awareness regarding the physical mobility of bodies across the African continent, as asylum became a coeval element of the newly-emergent democracy. The Refugee Act passed in 1998 aligned refugee protection with the new Constitution and, by extension, included the possibility of rights and recognition for individuals persecuted on the grounds of sexual orientation and gender. This thesis has argued that it is within these shifts that transgender – as a term, a possible politics and an identity – began to coalesce more clearly in certain spaces and not in others. As asylum seekers, like Udogu, began to cross into the country, so too did transgender, initially as a term embedded within the wider discourse of LGBT human rights, begin to cross out. Pathways created initially by LGBT activism, along with the denigration of 'gay rights' by religious and political leaders across the continent, and the publication of this by international news media, assisted in establishing South Africa as a safe haven. This thesis has argued that it has been this willing adoption of the *language* of LGBT human rights by South Africa, followed by organisations in Southern Africa, along with the influence of international funders – a pattern repeating itself cross-continently – that lead to the initial establishment of the – dormant – category: transgender.

This thesis has argued that with the emergence of Gender DynamiX in 2005, transgender seemingly came into its own as a political and social identity. Strategically taking on a mantle of regionalism, working hand in hand with larger 'transnational' organisations, GDX precipitated the development of transgender beyond the country's borders, thus taking 'better terminology' to possible constituents. These power dynamics, the role of transnationals and this regional flow of transgender have played out not only in relation to who comes to identify as transgender, and how, but also in how they might end up in South Africa applying for asylum. Transgender became a category of recognition, a site of funding, something to be, but also to travel both towards and with; the animator of a particular imaginary. These movements, the possibility of transgender, have not been

without limit. In exploring a genealogy of the term, I have argued that it is clear that if transgender gathers bodies to it that are doing something specific with their gender/sex, there must be a body prior to the discourse, someone who is doing gender in a way that transgender can claim or be claimed by. Tiwonge Chimbalanga represents a subject position with which transgender resonates, and although she remains included in the archive, she also presents the limits of the archive. It is in Chimbalanga's case that questions of corpopolitical ontology become critical, as do those of historical contingency, investments in identity, and ways of naming: the finitude of transgender comes into view.

Bodies and Borders, Borders and Bodies

Although a genealogy of transgender – its origin and its movements – provides some insight into the term, it is the journey of the knowing subject within this thesis that has provided the means through which to understand what the term does. As the term has moved, it has gained traction in relation to a wider audience, and has come to have a materiality and to hold meaning for certain bodies in relation to particular spaces. Throughout this thesis it is evident – given the centrality of movement and travel – that the bodies of knowing subjects and transgender work, epistemologically, ontologically, physically, and metaphorically, in relation to boundaries and borderlands, homes and imaginaries. As central themes to this thesis, these are also immanent to transgender as a category within the Global North and fall within what has been termed the “idealised temporal template” of gender migration.⁸⁵⁵ This has largely been framed in the Global North as a metaphorical journey. This thesis has taken this metaphor and questioned its utility for bodies that are made to travel, arguing that for gender refugees theirs is a journey – both metaphorically and physically, on multiple levels, not necessarily direct – but a move across and within borders and boundaries. In some ways this thesis has posed a critique of some of the notions of transgender which perhaps initially travelled with it and/or animate some of its understanding in the Global North. The journeys of gender refugees read through and in relation to the journey of transgender forces the question of who travels and under what circumstances, troubling, particularly, linear notions of home, belonging and movement.

The very same circuits of travel that animate transgender, for instance popular culture and news media, bring heightened visibility and vulnerability to groups considered ‘other’, that come into visibility in tension with these movements. Within several African countries these bodies, in their visibility as sites of gender transgression, represent the epitome of the homosexual other – strange, unnatural, inhuman, hounded by death and necessarily expelled. This is due to a confluence of factors, including colonial history and

⁸⁵⁵ Aizura, A. Z. (2012). Transgender Travel Narratives. In T. T. Cotten (Ed.), *Transgender Migrations: The Bodies, Borders and Politics of Transition*. New York: Routledge, p. 142.

heteropatriarchal discourse. For gender refugees, intimations as to their disruptive gender, linked to this perception of an innate sexuality, are brought to the fore when enquiries as to ‘what’ they are begin to surface. This is a moment of clear commonality among all participants. As this thesis has argued, this is not really a question, but a statement reflecting the borders of personhood. When the subjectivity of a body is troubled, in that applying binary categories of recognition – to be ‘boyed’ or ‘girlled’ – is interrupted, a *shifting* takes place that troubles language and personhood. This injunction forms part of the earliest inklings of something strange – in the words of Sara Ahmed, a strangeness that is visible, at the level of the body, to others. It is a question of intelligibility. This stranger in the form of the gender refugee is an embodied other, a some-body, known within the nation space but constituted as at odds with the law. This thesis has argued that for gender refugees, these are the beginnings of danger; the possibility of death resides within this injunction. Judith Butler’s understandings regarding intelligibility provide a segue between these perceptions of gender and some of the genealogical accounts within this thesis:

Persons are regulated by gender, and ... this sort of regulation operates as a condition of cultural intelligibility for any person. To veer from the gender norm is to produce the aberrant example that regulatory powers (medical, psychiatric, and legal, to name a few) may quickly exploit to shore up the rationale for their own continuing regulatory zeal.⁸⁵⁶

Death here includes the possibility of literal, physical death, but also social, political and civil death – the social relations of death, decay and dying that emerge from prolonged exposure to violence, neglect, deprivation and suffering. Death is sanctioned because these bodies fall outside the boundaries of the State, living in death worlds at the edges of the State, outside of the naturalised binaries of heteronormativity. Achille Mbembe’s reading of necropolitics as “the work of death” and sovereignty as “the right to kill or extinguish” opens the possibility of theorising the moment of departure and the nature of shifting in relation to transgender. Victor Mukasa’s words regarding ‘the smell of death’, its visceral existence, are poignant here:

I said I would never seek asylum in my life. I thought it would be cowardly to leave my home. I am a transgender-identifying individual and a founding director of Sexual Minorities Uganda. When my friend David Kato was killed, I started to smell death. I felt that my death was close, and I decided I was not ready to die ... It was time for me to leave in order to save my life.⁸⁵⁷

The state of shifting, this thesis has argued, troubles the notion of a ‘trans trajectory’. Much like the movement of transgender, gender refugees criss-cross, evade and creatively survive day-to-day discomforts and dangers by navigating physical and metaphorical borders and borderland spaces. These are key elements to life for those not imagined as within the home of the nation state, those in the borderland. For participants, subjectivity in

⁸⁵⁶ Butler, J. (2004). *Undoing Gender*. New York: Routledge, p. 52-53.

⁸⁵⁷ Mukasa, V. (2013, October 10). *Uganda is home*. Retrieved May 26, 2014, from <http://immigrationequality.org/2013/10/uganda-is-home/>

the borderlands is structured by multiple determinants. It is the impact of gender, sexuality and race, in relation to contradictory membership in competing cultures and identities – some of those imposed, and some of those chosen. For Gloria Anzaldúa, the borderland is physical but it is also epistemological and psychic. Importantly for this work, borderlands are animated by the experience of forced, often violent, displacement, but they are also spaces which present the possibility of resistance to control and domination. There is a constant tension between “agentic transgression and violent sublimation”.⁸⁵⁸ Critically, as transgender continues to travel and be taken up in various spaces, the borderland represents a space of application, mixture, adjustment and deployment, where survival necessitates incorporating that which is useful and rejecting that which is not, undermining or rerouting several interlocking systems of knowledge/power.

This thesis has argued that in the context of Africa, where transgender is often read through the concept of ‘homosexuality’ or as the pinnacle of what it means to be gay, dominant understandings of transgender are often woefully inadequate. Moreover, while all participants identified with transgender, they also used other language to indicate their identity in relation to their bodies, their communities, their gender and sexuality. In several cases one of the key means through which to discuss their gender identity was the use of the term ‘discomfort’. Centrally here, problems and experiences of marginalisation were very rarely framed, if at all, as an issue of the self, but rather discomfort created due to external factors. To be clear, the very reason for their experiences of exclusion was not that they could not inhabit the genders they desired in more ‘correct’ or fuller ways, but rather that societies, communities, schools and families inhibited often the most elementary level of what was felt as rightful self-expression on a day-to-day basis. The borderland makes room for the kind of embodied transgender existence espoused by participants – one of discomfort and shifting survival – where conflicting cultural representations and expectations with regards to who and what participants are expected to be is constantly negotiated.

Coming to South Africa: Constitutional-Legal Make up

The second primary argument of this thesis has suggested that the constitutional-legal make up of South Africa, post 1994, has functioned as a key constitutive element to framing the possibilities of transgender as it has circulated beyond the country’s borders. Indeed, that transgender, as it has migrated, has become intimately linked to the perceived rights, freedoms and protections unique to South Africa. This has been a key component to the investment in the imaginary of South Africa for gender refugees. This thesis has argued that

⁸⁵⁸ Rodríguez, E. G. (2012). Decolonizing Postcolonial Rhetoric. In M. M. Boatcă, S. Costa, & E. G. Rodríguez (Eds.), *Decolonizing European Sociology: Transdisciplinary Approaches*. Burlington: Ashgate Publishing, p. 61.

the constitution of South Africa in fact provides for radical, as yet unrecognised, possibilities beyond identitarian language for all manner of human beings to find recognition and protection within the country. This thesis reads the structure and intention of the Constitution as having unintended and progressive consequences regarding access to rights and protection for those who might consider themselves as transgender – or crucially, be considered so by others although they may not use the term for themselves – and seek refuge in the country.

As noted, this thesis has endeavoured to unearth the complex processes that have folded into one another allowing for the emergence of transgender in South Africa. Part of understanding the possibilities and materiality of transgender in South Africa has required an unpacking, as this thesis has done, of the relationship between legal perceptions and the variegated role of the State⁸⁵⁹, from Apartheid through to Constitutionalism, as the arbiter of both sex and gender and the logic/politics of this. From the outset, it is clear that the idea of a singular state entity with a clear perception of what it is doing when it asks about or records gender or sex, must be set aside. Rather than a monolithic entity with “a totalising logic, an ordered hierarchy, a comprehensive rationality, a unity of purpose and execution”⁸⁶⁰, States generally are multifarious entities that utilise a dichotomous perception of gender as an administrative apparatus, which affects all bodies in a given society. This intersects, undoes and inscribes other vectors of control and power, including, but not limited to, sex, sexuality, citizenship, race, and class. The State’s perceptions of gender, reinforced through the way administrative systems present bodies, for instance via State-issued or -sanctioned documentation, ostensibly suggest some sort of “truth about a person” within a specific “geographical, temporal and existential space”.⁸⁶¹

In coming to South Africa, gender refugees raise the question of the utility and tangibility of transgender in relation to the nation space and the construction of rights frameworks. As transgender circulates and is ostensibly available as a category of legal protection this thesis has asked: how this is actualised? Since one of the key points of agitation when considering the visibility of transgender phenomena the world over has been legislative, the way in which the South African state addresses transgender asylum seekers as they approach the state for protection has been a pivotal site to question the doing of

⁸⁵⁹ It must be noted that I read ‘the State’ here not as a monolithic singular entity but as comprised of multiple sites and actors. These perform many functions which are suggestive of an underlying logic that reproduces, configures and polices the arrangement between gender and sex in specific ways. See: Currah, P. (2013). Homonationalism, State Rationalities, and Sex Contradictions. *Theory Event*, 16(1), p. 5.

⁸⁶⁰ Currah, P. (2013). Homonationalism, State Rationalities, and Sex Contradictions. *Theory Event*, 16(1) p. 4

⁸⁶¹ Stryker, S. (2014). Biopolitics. *TSQ: Transgender Studies Quarterly*, 1(1-2), p. 39.

transgender. Along these lines, this thesis has focused on the tension, meaning, and ubiquity of papers and documentation showing sex/gender markers in relation to seeking asylum in South Africa. Carrying the correct form of papers – as is clear from participants' narratives regarding crossing borders – is a key means through which they navigate or circumnavigate borders. This thesis has argued that the very structure of the asylum system, as an initial site of access to the imaginary of South Africa, is deeply problematic, and it conflicts with perceptions of the possibilities of transgender that gender refugees might hold. Far from bringing any sense of protection, rights or acceptance, from the very moment a gender refugee approaches the queue outside the Refugee Reception Office (RRO) a rupture begins to emerge between radical constitutional possibility, rights availability and rights access. Indeed, the queue functions as the first instance among several where identifying as transgender proves problematic, dangerous and/or impossible.

The queue signals the perception of Home Affairs that there are two and only two sex/genders – discernible, definable and easily differentiated. Transgender reveals the techniques and assumptions of the asylum system in relation to gender/sex. It also indicates wider structural concerns regarding the facilitation of the movement of people not only in South Africa, but possibly more generally, in relation to asylum internationally. Indeed, gender refugees here highlight the incongruence of maintaining a bifurcated system of sex/gender administration while also requiring self-exposure in order to claim asylum so as to access a set of rights and protections that ostensibly function beyond identitarian language, as made possible by the South African constitution.

Transgender here is part of a kernel of hope that projects South Africa as a space where a person might come into legible and legal visibility. Following from this, the State's ability – in this case represented by the Department of Home Affairs – to either assert or deny recognition, to say what is possible and is not possible regardless of the law, has serious material, social and arguably psychological consequences. Even after accessing the RRO, the very nature of the interactions with state officials suggest a certain myopia regarding the possibility of homosexuality – let alone transgender identity. Participants relayed stories of being treated as abhorrent or being told it was impossible for them to be who they claimed since that type of person did not exist in their country of origin. Indeed, in those moments, being transgender-identified translated as an impossibility. As Paisley Currah notes,

The meanings of [sex and gender] are widely contested in the hard and soft sciences, in the humanities, in legal theory, in women's and gender studies, and increasingly in popular discourse. Ultimately, the only thing we know for sure about what sex means, or what gender means, is what state actors, backed by the force of law, say those words mean.⁸⁶²

⁸⁶² Currah, P., & Mulqueen, T. (2011). Securitizing Gender: Identity, Biometrics, and Transgender Bodies at the Airport. *Social Research*, 78(2), p. 21.

Moreover, for those who access any form of gender-affirming healthcare, provided as part of public healthcare in South Africa, the asylum system becomes even more tricky. As Ava's story explains, to transition – to encapsulate a particular way of being transgender more fully than is in fact offered by the state in one sense – is to become all but invisible within the asylum system. Transgender in Ava's case means the possibility of access to gender-affirming healthcare with a concomitant closing of the space in which she can be understood clearly as an asylum seeker, rather than someone fraudulently carrying papers which do not clearly and unambiguously state who she is. Ava's entire legal existence as a person is thrown into question. The conundrum of her existence within the asylum system suggests that transgender – in this case transgender as transition – does something very particular for gender refugees to citizenship and personhood. Ava's experience suggests that the person who left their country of origin is lost in the process of transition, and the legality of the individual standing at the Home Affairs official's window is so intimately tied to the home of the new country that to recognise her transgender status or her identity as a woman would be akin to naturalising her.

Within the asylum system, gender refugees are paradoxically highly visible yet in some ways impossible. Gender refugees, as noted, apply for asylum on the grounds of sexual orientation which, due to its broad reading, provides adequate protection and application; however, within the administrative nuances of a system of being registered, recorded, screened and the concomitant requirement of carrying paperwork reflecting this, there is no clear way of actually *seeing or acknowledging* transgender or broader readings of gender variability. Indeed, as has been argued, when met with what may seem to be anomalies, the asylum system – far from malfunctioning – functions at its highest proficiency, by making it almost impossible to remain within the system of asylum. In this moment of exclusion – or what this thesis has framed as 'falling out of the system' – "the existence of trans people is erased, so too is the need to consider them in policy".⁸⁶³ What this thesis has argued is that the dissonance experienced by gender refugees in South Africa is symptomatic of a dissonance between the possibilities of constitutional law in relation to the distinction made between sex and gender, along with particular readings of sexual orientation, and the pervasive politics/logic of binary 'sex/gender'. South Africa has, over time, maintained a complex and at times confounding position regarding the relationship between sex, gender, sexuality and the body. In relation to this, the meaning and intent of the law has often been at odds with the State's systems of governance. This has direct and often adverse consequences for those whose gender can be read as non-normative and who turn to South Africa for protection.

⁸⁶³ Payne, J. (2011). Unsuitable Bodies: Trans People and Cisnormativity in Shelter Services. *Canadian Social Work Review*, 28(1), p. 131.

Beyond the Doors of the RRO - Home

Home one, home two, home three, home four. When somebody talks about home, you have to listen carefully so you know which one the person is referring to.⁸⁶⁴

Finally, the third major argument, as noted, is closely linked to the first and second. Transgender, as it comes into contact with the legislative and administrative perceptions, in some ways becomes more solidified, more concrete, but in others – as has been noted – it disappears altogether. The notion of rights, as this thesis has argued, is one of the key constitutive elements of the imaginary of South Africa in relation to transgender. Positive legislative perceptions and frameworks regarding gender are one among many roots drawn from transgender. It is these narratives of possibility that establish a link with gender refugees and a projection of a life they wish to inhabit – one of freedom in relation to self-expression and self-determination – that draws them towards South Africa. In light of this it has been critical to understand how transgender, in its own migrations and shifting, bridges the space between the imaginary of gender refugees and the reality of the country. As has been argued within this thesis, gender refugees do not only move to claim something; they also impact and reflect something of the social and national spaces they inhabit.

A central theme to this thesis has been the notion of home – gendered homes, national homes, familial homes, the *home* in South African Home Affairs, shelters, and locations. What is home? How is it manifested? How is it imagined? Is it a destination, a point of exit, single, multiple or non-existent? Transgender, within this body of work, has several inflections which feed into one another, or work against the possibilities of each other, but all are in some way animated by a question of home. In order to understand the work of transgender in relation to gender refugees and their journeys, this thesis has placed Prosser's *Second Skins*, a founding text within Transgender Studies, in conversation with critiques regarding movement, migration and metaphor as it relates to trans individuals, and Sara Ahmed's work on notions of home and strangers. This has opened up a space for thinking through a geopolitical transgender positioning of home, drawing on desire in relation to the body, the nation, and community. This thesis has argued that for gender refugees, homes – as nations, communities or bodies – are complex and contingent spaces of inhabitation. The notion of home, or coming home (as the vehicle to ensured social inclusion and citizenship) overlooks the many ways that home may not exist, may never have existed, or at the very least may not exist in the way imagined. At the same time, this highlights the implicit, yet unmarked, sense of privilege and access in current dominant conceptualisations of transgender.

Ahmed asks what it might mean to be 'at home' and what relation this would have to transnational journeys, identity, belonging and space. She troubles the notion that home is a

⁸⁶⁴ Bulawayo, N. (2013). *We Need New Names*. London: Chatto & Windus, p. 192.

fixed, clearly-defined space, whether that be the nation or a stable identity. Home in relation to transgender appears throughout this thesis: there is the home implied by countries of origin, the home of the nation state, the home of community or family, the home that is the body at home, the *home* represented in the work of the South African Department of Home Affairs, and the physical home – shelters, apartments, and locations. Working alongside these, then, are the desires for a home – the home that is an imaginary – spatial, corporeal, geographical and social, which may combine some or all of the elements and questions of transgender as home. Transgender in this context does several things. At a theoretical level it destabilises perceptions of home from the Global North, but it also opens new imaginaries in relation to it. The kind of home that transgender brings to the fore, within this thesis, in relation to gender refugees, is more than one place and more than simply a space to be inhabited, as a process of becoming. What the narratives and lives of participants suggest is that home and the desire for home is never a singular space; home is not isolated – it exists in relation to communities, geopolitical investments and corporeal imaginaries. Where home is projected as synonymous with an elsewhere – in this case South Africa in relation to transgender – gender refugees provide a lens through which to understand how the possibility of entering that home might materialise.

In instances where transnational organisations have assisted in the movement of gender refugees to South Africa, there is a perception that transgender identity *is* or *presents* something particular in direct relation to the national topography – “a healthier atmosphere” – a space where it is possible to “build lives”.⁸⁶⁵ This thesis has argued that if the borderlands are spaces of shifting, creative survival, contradiction, ambiguity and marginality, then in South Africa participants hope to come out of the borderland to be part of a legal protected and acknowledged populous – a place constructed on the notion of rights, acceptance and recognition. Transgender in relation to South Africa is also invested with a sense of belonging – the possibility of community and of social and political inclusion. This in turn would bring an end to both shifting and discomfort – most overtly in the form of home as the nation space – reinforcing a concomitant belief that the country will facilitate an actualisation of the gendered self and a reinstatement of humanity. This reinstatement of humanity – the *human* in human rights discourse – is critical. In countries of origin it is this that is negated – as Beyoncé, a trans woman and activist from Uganda who was attacked in 2015, points out:

We often hear people talk about human rights for transgender people which is by a far a very beautiful thing to have ... It will shock you that from the lens of a transgender woman like myself our human rights and unique challenges are not addressed and given the due attention they at least deserve ... there is no real protection for transgender person in most African countries, our

⁸⁶⁵ Serino, K. (2008, August 26). Gay Refugees Meet Hostility in “Liberal” SA. *Bdlive*. Retrieved February 3, 2015, from <http://www.bdlive.co.za/articles/2008/08/26/gay-refugees-meet-hostility-in-liberal-sa?service=print>

governments can say that they are protecting rights of gender minorities but from our own lenses and lived realities, there is no such a thing as protection of transgender human rights in most countries.⁸⁶⁶

The experience of gender refugees in South Africa suggest that there is a fragile relationship between national belonging, rights access, community and transgender identity. This thesis has argued that this move towards a space where life might be conferred is hampered by 'common sense' readings or expectations of gender within South African society, similar to those which placed gender refugees as outsiders in their countries of origin. This thesis has framed this experience – day-to-day life beyond the walls of an RRO – using the work of Hannah Arendt as constitutive of two distinctive losses. The first is that of the imagined community and by extension the possibility of home. For Arendt it is not simply about the loss of home but also the impossibility of finding a new one. The second loss, in direct correlation to this, is that of security. Arendt's arguments regarding rights access and community bear repeating – in that to be a person without community, a person that relies on a State that is not their own for rights and protection is to "become *nothing but human*".⁸⁶⁷ Gender refugees who turn to the South African state in order to access asylum find themselves in the precarious position of lacking community, being highly visible, and being welcome neither in their own countries nor any other. As Arendt argues, finding a new place in the world to call home, finding community, is essential to "regaining one's fundamental rights".⁸⁶⁸ The inability to regain one's fundamental rights, or to find a new place in the world to call home, the loss of community, security, and one's political identity is, for Arendt, tantamount to being expelled from *humanity*.⁸⁶⁹

However, transgender can also function as a transnational site of resistance, particularly for those who create or rely on self-made community, like Tricia's group who adamantly identify with their country of origin nationality. It is this group, this thesis argues, that see transgender or use transgender as a means to navigate between States, although part of their ability to do this is the fact that they have community and/or some familial support. Their perception of their rights is vastly different to the perception of those who enter the asylum system. This group, as this thesis has suggested, assume rights will be conferred on them if and when necessary. Their status as both *transgender* and *country of origin identity*, a national belonging, in their mind implies that they will never be deported from South Africa. Their experiences in the Lindela detention facility attest to this. South Africa signifies a place in which they can live safely as both transgender and members of their country of

⁸⁶⁶ Karungi, B. (2015, September 10). Human Rights! In Whose Lens? The Agony Of A Transgender Woman In Uganda. *Kuchu Times*. Retrieved December 15, 2015, from <https://www.kuchutimes.com/2015/09/human-rights-in-whose-lens-the-agony-of-a-transgender-woman-in-uganda/>

⁸⁶⁷ Parekh, S. (2008). *Hannah Arendt and the Challenge of Modernity: A Phenomenology of Human Rights*. New York: Routledge, p. 25.

⁸⁶⁸ Ibid., p. 40.

⁸⁶⁹ Ibid.

origin. Rather than entering an asylum system which requires a repudiation of one's country of origin, this group travels back and forth, maintaining family and in some cases home community ties. It is this tie to their country of origin, surprisingly, being a specific nationality, that – this thesis argues – provides them with a particular form of home, security and community.

“The Best Way of Being Transgender”⁸⁷⁰

Throughout this thesis, the experiences of the majority of gender refugees – both prior to arriving in South Africa and, perhaps surprisingly, within the country – have largely been marked by varying levels of violence, trauma and exclusion. Along with this they often experience within South Africa an acute lack of access to employment, shelter, and adequate documentation, which only compounds feelings of marginalisation. Seeking asylum in South Africa is a difficult task for anyone, but this thesis has argued that there are specific issues with regards to asylum in South Africa that hamper the ability of those who identify as transgender to access the specific rights and protections available. Experiences certainly vary from participant to participant. For the majority of participants, those who are read as disruptive of gender norms and who have turned to the South African state to claim asylum, are, through various means, excluded – rather than entering a realm of protection or safety. Although South Africa offers a radical rights framework that ostensibly has the potential to recognise and protect these particular asylum seekers, there is a disconnect as soon as they choose to actively claim rights – by claiming asylum. Indeed, it is only those participants who actively circumnavigate engagement with the South African state who have been able to establish some of the parameters of a liveable life – again, to varying degrees. The ability to do so is also influenced by documentation, employment, acceptable normative gender presentation and ties to some form of community, including family.

With regards to those who do directly claim asylum, in the almost 20 years since the inception of the South African Refugee Act of 1998, not one transgender-identified asylum seeker has been awarded refugee status on grounds related to gender. In fact, as this thesis has noted every single applicant who has received refugee status has been awarded such due to persecution based on sexual orientation. More often than not presenting as transgender, within the asylum system, has simply been read as the most obvious presentation of homosexuality. The fact that sexual orientation in South Africa also ostensibly covers transgender has paradoxically opened the ability to apply for asylum while curtailing the ability to speak about issues specific to gender. As this thesis has argued, transgender as a potential asylum claim is more than simply about acknowledging difference of identity and persecution – it raises material questions about the very nature

⁸⁷⁰ Alex

and structure of asylum more broadly, but also about gender as a system of administration, the possibility of social and political life for transgender people, and the meanings and realities of human rights and protections.

Alex, a participant who escaped being poisoned and certain death in coming to South Africa, noted in one of our last interviews before being resettled by the UNHCR that in South Africa one could certainly be transgender but within this being there was a ‘best way’ to do so. Alex astutely describes the experience of the queue in relation the tension regarding hiding from and visibility to both fellow country people and asylum seekers from the same region, and perceptions of gender/sex, as not only a systemic violence but a “double oppression” faced by asylum seekers because they are transgender. Notably, this ‘best way’ was one that Alex ultimately had been both unable and/or unwilling to pursue.

I think the best way of being transgender is just to reach in order to finish the process ... if you just in the middle you face discrimination because if I really reach all the transition of being transgender ... People will not identify me. People will think she is a girl ... It’s good because that way you like conform to the society because the society wants to identify people - you are a man or you are a woman. So, if you are in the middle nobody is going to understand you.⁸⁷¹

Alex’s statement is profound. If, as they suggest, there is a ‘best way of being transgender’ then we can also conclude that there are, as this thesis has suggested, many other possibilities – a hierarchy requires other options in order for a singular option to be the best. In this case the best of way being transgender is, in essence, not to be, or at least to be so in a manner that does not disrupt the status quo. Arguably, this conforming to society brings gender refugees full circle, back to the childhood injunction of ‘what’. For Alex, there is an answer to this – to invest in ‘the process’ and become either a man or a woman, because to be otherwise is to remain in the middle – the one that society will not identify. This *will* on the part of society to not identify, reflecting the arguments of Ahmed, is a suggestion that the refusal is an active choice. Marking the stranger as some *body*, an *other*, already known.⁸⁷² To be transgender and an active asylum seeker is to struggle with the compounded experience of the refugee regime, gender as a category of classification within the RRO, common sense readings of sex/gender as a wider administrative classification, and the erosion of all vestiges of community.⁸⁷³ It is Arthur who comes to South Africa and – in Alex’s framework – ‘reach all the transition of being transgender’ – he escapes being known and evades the watchfulness and knowledge of previous communities. He is able to begin a new life, a liveable life unfettered by the past. It is the *best way* of being transgender for Arthur, transgender as binary identity, that has paradoxically presented an escape route in South Africa.

⁸⁷¹ Alex

⁸⁷² Ahmed, S. (2000). *Strange Encounters: Embodied Others in Post-Coloniality*. Routledge, pp 21.

⁸⁷³ Arendt, H. (1962). *The Origins of Totalitarianism*. New York: Meridian Books, p. 294.

Participants are, by necessity, extraordinarily resilient and creative. From Maxine, Tricia, Nelly and Bobbie ‘fixing their passports’ to Ava’s manipulation of the asylum system, participants find ways and means to survive. What must be stressed, however, is that surviving is nothing like the kind of life they imagined they would come to inhabit in South Africa. As noted, two participants in this thesis, Akraam and Alex, were resettled from South Africa in the time of undertaking this project and a third, Tiwonge Chimbalanga, is in the process of applying for resettlement. After receiving refugee status through the help and intervention of GDX, Sasha swiftly left South Africa, citing that life would be better with refugee papers elsewhere.⁸⁷⁴ Stella, whose initial asylum papers did not have the correct country of origin nor her correct name – both crucial administrative issues which she could not get rectified for fear of being accused of fraud – has subsequently ‘fallen out of the asylum system’. She missed a renewal date because she could not afford to travel back to the original site of her application, and has now incurred a fine which, as a sex worker, she cannot afford to pay. This has effectively left her stateless and – in the eyes of the South African state – illegal. Kelly and Daniel continue to wait for a decision to be made on their asylum claims, having been in the system well over the stipulated 18-month period. Kelly lives in hope of being granted refugee status, in order to either apply for resettlement or find a means through which to leave South Africa. Victor has moved to, and been granted refugee status in, the United States. As noted, Ava is in the process of manipulating the several documents with different embassies to ensure that she receives a passport stating her correct gender, allowing her to be no longer “jailed in this Cape Town”.⁸⁷⁵ Arthur, Tom and Eshe – all of whom are employed, have work permits and a sense of stability, and present in ways considered more normative than other participants – remain in South Africa. They acknowledge their particular privilege in relation to employment, access to gender-affirming healthcare and their relative ability to ‘pass’. Tatenda has also exited the asylum system and returned to her country of origin.

Transgender is about gender; it is about how gender is lived out in relation to the variability of bodies, homes, communities and nation spaces. For gender refugees, this is a term, though, which is chosen, selected over a litany of others: it is in this choosing that the answers to what transgender does and is expected to do unfold. In coming to South Africa transgender is expected to work as a means through which to *translate* or explain their gender identity and expression in a language that is considered as already existing, as a constitutive element, of the South African national body. This suggests that transgender must draw its meaning in relation not only to bodies but also to geopolitical locales, perceptions, and most importantly the needs of knowing subjects. Within this thesis, the

⁸⁷⁴ ‘Sasha’. Gay and Lesbian Memory in Action Archives of South Africa (GALA). Available at ‘Gender Dynamix Collection – GAL108’, Johannesburg, William Cullen Library, University of the Witwatersrand

⁸⁷⁵ Ava

term – ‘transgender’ – and the ‘knowing subject’ – gender refugees – work in concert with one another, but they are both constituted by networks of knowledge and power that are transformed by their presence. The combination of these journeys, within this thesis, reads as corpo-political narratives that offer a particular geographically-anchored explanation for the existence and experiences of gender refugees. If ‘trans’ is a prefix that “*works with elements of any origin*” then this thesis has argued that it is complicated by and dependent on the spaces and national homes it inhabits, and defined by the individual ontological experiences of those who inhabit it. Moreover, it may, in order to truly function, require a world where gender can be envisioned as an element of self-constructed, ideological, felt, performed, inhabited or technologically produced – existing beyond identitarian language. Indeed, the South African Constitution, in some ways, arguably provides a glimmer of this world, by providing an expansive definition of sexual orientation beyond identitarian language. The radical rights-based possibilities and subsequent imaginary that South Africa may come to symbolise beyond its borders is part of the working of trans, this *doing* of trans embedded in this vision, that dictates both promise and possibility for those “*of any origin*” – gender refugees.

Appendix One

Asylum: Sexual Orientation and Gender Identity

The five grounds of the United Nations Convention do not actually mention sex or gender, let alone explicitly mentioning sexual orientation or gender identity/expression. In the 1980s, countries first began receiving claims for asylum due to a fear of persecution on the basis of sexual orientation.⁸⁷⁶ The US Immigration and Nationality Service (INS) is responsible for one of the earliest precedent-setting decisions in this regard. In *Matter of Toboso-Alfonso*⁸⁷⁷, the INS argued that socially deviant behaviour, in this case homosexual activity, could not form the basis for a finding of a particular social group; accordingly they ruled against recognising a gay Cuban national as a refugee. On appeal, the Board of Immigration Appeals (BIA) disagreed. In 1994, former Attorney General Janet Reno ordered that the decision be considered as precedent in related asylum matters.⁸⁷⁸

Perhaps one of the first cases addressing both gender identity/expression and sex was that of an Algerian transsexual, commonly known as Ourbih, who applied for refugee status in France in 1995.⁸⁷⁹ The decision of the “La Commission Des Recours Des Réfugiés” (CRR) was to reject the case on the grounds that the applicant – though marginalised in Algerian society – could not be considered a member of a particular social group. On review of the legal question, the Conseil d’État (CE), the highest administrative court in France, concluded that a social group as envisaged in the Convention is not detached from the persecution of which it is the object; the persecution may even be a key constitutive element in identifying a social group. In light of this, transsexuals would constitute a particular social group but only in countries where their “sexual specificity leads to persecution”⁸⁸⁰. The CE relied on

⁸⁷⁶ In the Netherlands, the decision – asylum due to sexual orientation as a member of a particular social group – was first taken by the highest court dealing with refugee cases, the Council of State, as early as 1981. This was followed by Germany and the case of an Iranian homosexual in 1983. The first North American decision was taken by Canada’s Immigration and Refugee Board in 1992. See: Henes, B. (1994). *The Origin and Consequences of Recognizing Homosexuals as a “Particular Social Group” for Refugee Purposes*. *Temple International Comparative Law Journal*, 8.

⁸⁷⁷ Fidel Toboso-Alfonso arrived in the USA from Cuba in 1980. His original entry to the country was facilitated through the Mariel boatlift. Placed in deportation proceedings Toboso-Alfonso applied for withholding of removal and asylum due to fear of persecution in Cuba because he was gay. Source: McKinnon, S. L. (2008). *The Discursive Formation of Gender in Women's Gendered Claims to U.S. Asylum*. PhD Arizona State University: ProQuest UMI Dissertation Publishing p. 197

⁸⁷⁸ United States Board of Immigration Appeals. (March 12, 1990). *Matter of Toboso-Alfonso*, Interim Decisions #3222. USA. Retrieved September 16, 2014, from <https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/3222.pdf>

⁸⁷⁹ Conseil d’Etat. (1997, June 23). CE, SSR, 23 Juin 1997, Ourbih. France. Retrieved September 16, 2014, from <http://www.refworld.org/docid/3ae6b67c14.html>

⁸⁸⁰ Haines, R., QC. (n.d.). French Jurisprudence. *New Zealand Refugee Law*. Retrieved September 15, 2014, from <http://www.refugee.org.nz/larljfrench.htm>

foreign jurisprudence⁸⁸¹, categorising sexual orientation as a particular social group including the precedent *Matter of Toboso-Alfonso*. Similar conclusions regarding gender identity have been reached in growing numbers in the 2000s in Austria⁸⁸², Sweden⁸⁸³, Canada⁸⁸⁴, and the US.⁸⁸⁵

⁸⁸¹ In 1983, the Verwaltungsgericht Weisbaden (Administrative Court in Weisbaden) in its judgment of Apr. 26, 1983, No. IV/I E 06244/81, reviewed a social group claim by an Iranian national who feared that as a homosexual he would be punished and perhaps executed. The decision at first instance of the Federal Refugee Office was that the applicant could return to Iran and live peacefully by hiding his homosexuality. His claim for asylum was denied because it was believed his fear of persecution was not sufficiently well founded. The Administrative Court, in disagreement with the decision, reversed it on the basis that suggesting that the applicant return and live an inconspicuous life was akin to suggesting he try to change his skin colour. Furthermore, the court argued that since he was a homosexual, and homosexuals faced persecution in Iran, he would most likely face persecution. The court asserted that it was irrelevant if group members knew each other or were members of an organisation – an assertion which proved pivotal for further developments in relation to the legal meaning of homosexuals as a particular social group. For the purposes of the 1951 Convention, the key to determining the existence of a particular social group was if the population viewed the collection of people in question as unacceptable. According to the court, then, it is necessary to understand how an objective observer of society would assess the treatment of the group. Based on the “pejorative labels attached to homosexuals, the prejudice expressed against them, and the destructive treatment they are subject to [sic] in Iran and in many other societies, the court concluded that homosexuals constitute a particular social group within the Geneva Convention”. Source: Fullerton, M. (1990). *Persecution Due to Membership in a Particular Social Group: Jurisprudence in the Federal Republic of Germany*. *Georgetown Immigration Law Journal*, 4, 381-444.; Refugee Appeal Authority. (24 August 1995). *Wiesbaden Administrative Court (VG Wiesbaden)*. (26 April 1983). Case No. IV/1 E 06244/81. In E. Feller, V. Turk and F. Nicholson (Eds.), *Refugee Protection in International Law: UNHCR’s Global Consultation on International Protection*. Cambridge University Press p. 283; Refugee Appeal Authority. (24 August 1995). Auckland, Refugee Appeal No. 1312/93. New Zealand. Retrieved September 16, 2014, from <http://www.refugee.org.nz/rsaa/text/docs/1312-93.html>

⁸⁸² In 2003, an Iranian transsexual applied for asylum in Austria. The applicant claimed to have been arrested, harassed and imprisoned on several occasions in Iran due to their transsexuality. The court, on appeal, ruled in 2006 that the applicant’s transsexuality established her as a member of a particular social group which would provoke further persecution if she returned to Iran. Source: Unabhängiger Bundesasylsenats UBAS (Federal Independent Asylum Tribunal). (March 28, 2006). 244.745/0-VIII/22/03. Austria. In Nowak, M. (2010). *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity (Report)*. Austria: European Union Agency for Fundamental Rights.

⁸⁸³ In Sweden, according to the *travail préparatoires* (Prop. 2005/06:6) – preparatory legislative materials, an important source of Swedish law – trans persons fall within the category of “gender” which is included in the Swedish refugee definition. This means that a person can be eligible for refugee status if they are persecuted for being transsexual. Source: European Union Agency for Fundamental Rights (FRA). (2009). *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States*. Austria: European Union Agency for Fundamental Rights p. 90

⁸⁸⁴ *Decision T98-04159*. (March 13, 2000). *Decision T98-04159*, Canada Immigration and Refugee Board Refugee Division. Canada. Retrieved August 12, 2014, from <http://www.refworld.org/docid/4dada1672.html>

Since the 1990s there has been a steady shift, perhaps partly due to growing transgender visibility in the Global North in relation to UN refugee guidelines. In 2002 *The Guidelines on the Protection of Refugee Women* were updated and re-issued. The document opens with the following:

‘Gender-related persecution’ is a term that has no legal meaning per se. Rather, it is used to encompass the range of different claims in which gender is a relevant consideration in the determination of refugee status⁸⁸⁶

The updated version also contained a section outlining *Persecution on Account of One’s Sexual Orientation*.⁸⁸⁷ The section notes that refugee claims based on sexual orientation contain an element of gender, and that a claimant’s “sexuality or sexual practices may be relevant to a refugee claim where he or she has been subject to persecutory (including discriminatory) action on account of his or her sexuality or sexual practices”.⁸⁸⁸ They add that homosexuals, transsexuals and transvestites are the most common claimants, having faced “extreme public hostility, violence, abuse, or severe or cumulative discrimination”.⁸⁸⁹

The UNHCR also published guidelines addressing *Membership of a particular social group* in 2002. The guidelines clarify that the group does not need to be cohesive, know each other or associate with each other, and, although persecution may be a relevant factor in making the group visible within society, it cannot be the defining factor. It is also not necessary to establish that all perceived members of a social group are at risk of persecution. Certain members may not be at risk because they are able to hide or they cooperate with persecutors. The size of the group does not hold any relevance, either.

⁸⁸⁵ In 2000, a US appellate court held that a gay man with a “female sexual identity”, who wore his nails and hair long and dressed in feminine attire, was a member of a particular social group in Mexico. The initial ruling by the immigration judge noted that the individual did not always wear feminine attire and found that the “applicant’s gender identity was not immutable because he could make the decision not to dress as a woman and in fact sometimes wore men’s clothing”. For the court, however, the fact that the applicant could change attire was irrelevant; it relied on a definition of particular social group that established this was an innate characteristic, fundamental to the applicant’s identity, and something that he should not be required to change. Source: International Commission of Jurists (ICJ). (2011). *Sexual Orientation, Gender Identity and Justice: A Comparative Law Casebook*. Geneva: ICJ. p. 286; *Geovanni Hernandez-Montiel v. Immigration and Naturalization Service*. (August 24, 2000). 225 F.3d 1084 (9th Cir. 2000); A72-994-275 United States Court of Appeals for the Ninth Circuit. USA. Retrieved September 16, 2014, from <http://www.refworld.org/docid/3ba9c1119.html>

⁸⁸⁶ UN High Commissioner for Refugees (UNHCR). (2002). *Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01 Guidelines on International Protection*. Retrieved July 25, 2016, from <http://www.refworld.org/docid/3d36f1c64.html>

⁸⁸⁷ Ibid., p. 4

⁸⁸⁸ Ibid.

⁸⁸⁹ Ibid., p. 5.

Furthermore, there is no requirement that the persecutor be a state actor: as an example the guidelines note that homosexuals may be victims of serious discrimination or violence from non-state actors or private groups. These acts can be considered “persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection”.⁸⁹⁰

Significantly, in 2008, the *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender identity* was released.⁸⁹¹ It established the UNHCR’s first analysis and recognition of the specific issues and hurdles regarding sexual orientation and gender identity in applying for refugee status.⁸⁹² The Note was the first to make direct reference to transgender claimants⁸⁹³, drawing on both the Oubih case and another case, also from France, involving an Algerian asylum claimant.⁸⁹⁴ Finally, in 2012, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity* was released, introducing a wider notion of gender into the equation of asylum determination. Drawing on the Yogyakarta Principles, and closely echoing the first National Coalition for Gay and Lesbian Equality (NCGLE) case,⁸⁹⁵ the Guidelines define sexual orientation as referring to: “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate relations with, individuals of a different gender or the same gender or more than one gender”.⁸⁹⁶ Gender identity is defined as: “each person’s

⁸⁹⁰ UN High Commissioner for Refugees (UNHCR). (2002). “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees. Retrieved July 25, 2016, from <http://www.refworld.org/docid/3d36f23f4.html> p. 5

⁸⁹¹ Guidance notes are less authoritative than guidelines but they do provide a level of legal clarity. They are usually the signs of a first attempt by the UNHCR to address emerging legal issues drawing on national case law, international jurisprudence in the refugee context and positive practices of states, in this case with regards to sexual orientation and gender identity-related asylum decisions.

⁸⁹² Ettelbrick, P. L., & Zeran, A. T. (2010). *The Impact of the Yogyakarta Principles on International Human Rights Law Development: A Study of November 2007 – June 2010 Final Report*. Retrieved July 15, 2014, from http://www.ypinaction.org/files/02/57/Yogyakarta_Principles_Impact_Tracking_Report.pdf p. 17

⁸⁹³ UN High Commissioner for Refugees (UNHCR). (2008). *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*. Retrieved July 25, 2016, from <http://www.refworld.org/docid/48abd5660.html> p. 15

⁸⁹⁴ This case is considered to have affirmed the decision that transsexuals may constitute a particular social group. An Algerian considered to have “the syndrome of transsexualism” was recognised as part of a social group not tolerated in Algeria and so rightly feared persecution, and because of this was entitled to refugee status. Source: Denis-Linton, M., & Malvasio, F. (2012). *Trente ans de jurisprudence de la Cour nationale du droit d’asile et du Conseil d’État sur l’asile*. France. Retrieved July 25, 2016, from <http://www.refworld.org/docid/500516fa2.html>

⁸⁹⁵ *National Coalition for Gay and Lesbian Equality v The Minister of Justice* 1998 (12) BCLR 1517 (CC) at para 21

⁸⁹⁶ International Commission of Jurists (ICJ). (2007). *The Yogyakarta Principles-Principles on the Application of International Human Rights Law in Relation to Sexual*

deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body and other expressions of gender, including dress, speech and mannerisms".⁸⁹⁷ Notably, there is a clear evolution in both the use of language and general explanations, drawing on the possibility that a person seeking asylum may identify as 'queer', along with the possibility that gender identity and its expression may "take many forms, with some individuals identifying neither as male nor female, or as both ... and their sexual and gender expressions may vary with age, and other social and cultural determinants".⁸⁹⁸ Attaining a level of wider cultural relevancy, the guidelines stress the need for understanding experiences contextually, and that not all applicants may know the terminology or self-identify with the labels provided; many may use the derogatory terms of their persecutors.⁸⁹⁹

The combination of both the UN Convention along with these guidelines and the South African Constitution ostensibly ensure the rights and recognitions of transgender individuals fleeing persecution in their countries of origin. Seen as members of a particular social group, with established international precedent in this regard, transgender people should be able to attain refugee status in South Africa.

Orientation and Gender Identity. Retrieved July 25, 2016, from <http://www.refworld.org/docid/48244e602.html>

⁸⁹⁷ Ibid.

⁸⁹⁸ UN High Commissioner for Refugees (UNHCR). (2012). *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*. Retrieved March 20, 2014, from <http://www.refworld.org/docid/50348afc2.html> p. 3

⁸⁹⁹ Ibid.

Appendix Two: The Refugee Process in South Africa

Individuals⁹⁰⁰ entering South Africa through a port of entry – a land border post, airport or harbour – and wishing to apply for asylum, must present themselves at a Refugee Reception Office (RRO). Prior to approaching an RRO, if they make it known to an official that they wish to seek asylum, for instance at the border, the official is under obligation to issue with a Section 23 permit – a non-renewable “asylum transit permit”.⁹⁰¹ Prior to 2014, the permit was valid for fourteen days; new immigration legislation suggests that this will be cut down to five working days⁹⁰², within which time the person is expected to report to their nearest RRO in order to apply for asylum. If the permit lapses before the person accesses an RRO, the person can be deemed an ‘illegal foreigner’ or ‘undesirable person’⁹⁰³ and is at risk of deportation⁹⁰⁴.

At the RRO, the asylum seeker is required to furnish the following documents: the Section 23 permit, any proof of identification stipulating country of origin, and a travel document, should they be in possession of one.⁹⁰⁵ A Refugee Reception Officer will conduct an initial eligibility interview, with the assistance of a translator if necessary, to establish identity and reasons for asylum application. An Eligibility Determination Form is filled in, the applicant’s fingerprints are taken, and their data and image are captured in the refugee system. These will then be printed, signed, dated, stamped, and issued as a Section 22 Asylum Seeker’s Permit, which gives the applicant the right to work and study in South Africa and protects them from deportation. The initial permit is valid for a period of six months while the asylum seeker awaits their second interview – a status determination hearing – with a Refugee Status Determination Officer (RSDO) and the outcome of their

⁹⁰⁰ English pronouns are problematic when writing for, or about, transgender or gender-nonconforming communities. For some, to be transgender is to reject or feel oneself to be outside of binary gender categorisation, thus the singular pronouns ‘he’ or ‘she’ are inappropriate and inadequate. I have acknowledged participants’ preferred pronouns throughout this thesis. These are limited to he, she and they.

⁹⁰¹ Department of Home Affairs of the Republic of South Africa. (2014). *Department of Home Affairs - Refugee Status & Asylum*. Retrieved July 15, 2014, from <http://www.home-affairs.gov.za/index.php/refugee-status-asylum>

⁹⁰² *Immigration Amendment, Act no. 13 of 2011 S23 (1)*

⁹⁰³ At the time of writing this chapter, the new Immigration Amendment Act had just come into force (though it had been presented to Parliament in 2011, its implementation had been delayed), amidst much controversy. One of the many issues was the unduly harsh changing of the asylum transit visa from fourteen days to five days. The regulation came into force on 26 May 2014; however, as of 15 July 2014, the Department of Home Affairs website still stated that the asylum transit visa was valid for a period of 14 days.

⁹⁰⁴ *Immigration Amendment, Act no. 13 of 2011 S23 (1)*

⁹⁰⁵ Department of Home Affairs of the Republic of South Africa. (2014). *Department of Home Affairs - Refugee Status & Asylum*. Retrieved July 15, 2014, from <http://www.home-affairs.gov.za/index.php/refugee-status-asylum>

asylum application.⁹⁰⁶ The document is not allowed to expire and must be renewed by the applicant every one to three months at the discretion of Refugee Reception Officers.

The purpose of the first interview is to gather particulars such as identity, country of origin, route taken and reasons for fleeing; however, the second interview is a far more thorough interrogation of the details originally provided, in order to facilitate a decision regarding refugee status. On conclusion of the status determination hearing, the RSDO must take one of the following actions: grant asylum; reject the application as manifestly unfounded,⁹⁰⁷ abusive or fraudulent;⁹⁰⁸ reject the claim as unfounded; or refer any question pertaining to the law to the Standing Committee for Refugee Affairs (SCRA).⁹⁰⁹ If granted asylum, a refugee is issued with a section 24 permit, allowing them to remain in South Africa for four years. This document is renewable. Once an individual is recognised as a refugee, can then apply for a Refugee ID followed by a United Nations Convention Travel Document (UNCTD). If not granted asylum, a refugee has the right to appeal the decision with the Refugee Appeal Board.

⁹⁰⁶ Ibid.

⁹⁰⁷ An application is considered to be manifestly unfounded when it does not fit within the stipulations of the refugee act or when the applicant is an economic migrant.

⁹⁰⁸ When there is evidence that an applicant has applied for asylum in the past under a different name or is fleeing their country because they face civil or criminal prosecution.

⁹⁰⁹ Department of Home Affairs of the Republic of South Africa. (2014). *Department of Home Affairs - Refugee Status & Asylum*. Retrieved July 15, 2014, from <http://www.home-affairs.gov.za/index.php/refugee-status-asylum>

Abbreviations

ACA	Aliens Control Act
AU	The African Union
CE	Conseil d'État
CRR	La Commission Des Recours Des Réfugiés
DHA	Department of Home Affairs
FPE	Phi Phi Epsilon
GALA	Gay and Lesbian Memory in Action Archives (formerly the Gay and Lesbians Archives)
GALZ	Gays and Lesbians of Zimbabwe
GDX	Gender DynamiX
ICE	US Immigrations and Customs Enforcement
INS	The US Immigration and Nationality Service
LEGATRA	Lesbians, Gays, Bisexual and Transgender Persons Association of Zambia
LGBT	Lesbian, Gay, Bisexual and Transgender
LRF	Legal Reform Fund
NCGLE	National Coalition for Gay and Lesbian Equality
NGO	Non Government Organisation
OAU	Organisation of African Unity
RRO	Refugee Reception Office
RSDO	Refugee Status Determination Officer
SAMJ	South African Medical Journal
SCRA	Standing Committee for Refugee Affairs
SHE	Social, Health and Empowerment Feminist Collective of Transgender Women of Africa
TRP	The Rainbow Project
UN	United Nations
UNCTD	United Nations Travel Document
UNHCR	United Nations High Commissioner for Refugees

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